# 1AC

## plan

The United States federal government should limit the war power authority of the president for self-defense targeted killings to outside an armed conflict.

## drones adv

Conflation of self-defense and the laws of war disrupts effective TK

Geoffrey Corn, South Texas College of Law, Professor of Law and Presidential Research Professor, J.D., 10/22/11, Self-defense Targeting: Blurring the Line between the Jus ad Bellum and the Jus in Bello, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1947838

At the core of the self-defense targeting theory is the assumption that the jus ad bellum provides sufficient authority to both justify and regulate the application of combat power.71 This assumption ignores an axiom of jus belli development: the compartmentalization of the jus ad bellum and the jus in bello.72 As Colonel G.I.A.D. Draper noted in 1971, “equal application of the Law governing the conduct of armed conflicts to those illegally resorting to armed forces and those lawfully resorting thereto is accepted as axiomatic in modern International Law.”73 This compartmentalization is the historic response to the practice of defining jus in bello obligations by reference to the jus ad bellum legality of conflict.74 As the jus in bello evolved to focus on the humanitarian protection of victims of war, to include the armed forces themselves,75 the practice of denying LOAC applicability based on assertions of conflict illegality became indefensible.76 Instead, the de facto nature of hostilities would dictate jus in bello applicability, and the jus ad bellum legal basis for hostilities would be irrelevant to this determination.77

This compartmentalization lies at the core of the Geneva Convention lawtriggering equation.78 Adoption of the term “armed conflict” as the primary triggering consideration for jus in bello applicability was a deliberate response to the more formalistic jus in bello applicability that predated the 1949 revision of the Geneva Conventions.79 Prior to these revisions, in bello applicability often turned on the existence of a state of war in the international legal sense, which in turn led to assertions of inapplicability as the result of assertions of unlawful aggression.80 Determined to prevent the denial of humanitarian regulation to situations necessitating such regulation—any de facto armed conflict—the 1949 Conventions sought to neutralize the impact of ad bellum legality in law applicability analysis.81

This effort rapidly became the norm of international law.82 Armed conflict analysis simply did not include conflict legality considerations.83 National military manuals, international jurisprudence and expert commentary all reflect this development.84 This division is today a fundamental LOAC tenet—and is beyond dispute.85 In fact, for many years the United States has gone even farther, extending application of LOAC principles beyond situations of armed conflict altogether so as to regulate any military operation.86 This is just another manifestation of the fact that States, or perhaps more importantly the armed forces that do their bidding, view the cause or purported justification for such operations as irrelevant when deciding what rules apply to regulate operational and tactical execution.

This aspect of ad bellum/in bello compartmentalization is not called into question by the self-defense targeting concept.87 Nothing in the assertion that combat operations directed against transnational non-State belligerent groups qualifies as armed conflict suggests the inapplicability of LOAC regulatory norms on the basis of the relative illegitimacy of al Qaeda’s efforts to inflict harm on the United States and other victim States (although as noted earlier, this was implicit in the original Bush administration approach to the war on terror).88 Instead, the self-defense targeting concept reflects an odd inversion of the concern that motivated the armed conflict law trigger. The concept does not assert the illegitimacy of the terrorist cause to deny LOAC principles to operations directed against them.89 Instead, it relies on the legality of the U.S. cause to dispense with the need for applying LOAC principles to regulate these operations.90 This might not be explicit, but it is clear that an exclusive focus on ad bellum principles indicates that these principles subsume in bello conflict regulation norms.91

There are two fundamental flaws with this conflation. First, by contradicting the traditional compartmentalization between the two branches of the jus belli,92 it creates a dangerous precedent. Although there is no express resurrection of the just war concept of LOAC applicability, by focusing exclusively on jus ad bellum legality and principles, the concept suggests the inapplicability of jus in bello regulation as the result of the legality of the U.S. cause. To be clear, I believe U.S. counterterror operations are legally justified actions in self-defense. However, this should not be even implicitly relied on to deny jus in bello applicability to operations directed against terrorist opponents, precisely because it may be viewed as suggesting the invalidity of the opponent’s cause deprives them of the protections of that law, or that the operations are somehow exempted from LOAC regulation. Second, even discounting this detrimental precedential effect, the conflation of ad bellum and in bello principles to regulate the execution of operations is extremely troubling.93 This is because the meaning of these principles is distinct within each branch of the jus belli.94

Furthermore, because the scope of authority derived from jus ad bellum principles purportedly invoked to regulate operational execution is more restrictive than that derived from their jus in bello counterparts,95 this conflation produces a potential windfall for terrorist operatives. Thus, the ad bellum/in bello conflation is ironically self-contradictory. In one sense, it suggests the inapplicability of jus in bello protections to the illegitimate terrorist enemy because of the legitimacy of the U.S. cause.96 In another sense, the more restrictive nature of the jus ad bellum principles it substitutes for the jus in bello variants to regulate operational execution provides the enemy with increased protection from attack.97 Neither of these consequences is beneficial, nor necessary. Instead, compliance with the traditional jus ad bellum/jus in bello compartmentalization methodology averts these consequences and offers a more rational approach to counterterrorism conflict regulation.98

That makes future terrorist attacks inevitable

Geoffrey Corn, South Texas College of Law, 6/2/13, Corn Comments on the Costs of Shifting to a Pure Self-Defense Model, www.lawfareblog.com/2013/06/corn-comments-on-the-prospect-of-a-shift-to-a-pure-self-defense-model/

The President’s speech – like prior statements of other administration officials – certainly suggests that the inherent right of self-defense is defining the permissible scope of kinetic attacks against terrorists. I wonder, however, if this is more rhetoric than reality? I think only time will tell whether actual operational practice confirms that “we are using force within boundaries that will be no different postwar”. More significantly, if practice does confirm this de facto abandonment of AUMF targeting authority, I believe it will result in a loss of the type of operational and tactical flexibility that has been, according to the President, decisive in the degradation of al Qaeda to date. The inherent right of self-defense is undoubtedly a critical source of authority to disable imminent threats to the nation, but it simply fails to provide the scope of legal authority to employ military force against the al Qaeda (and associated force) threat that will provide an analogous decisive effect in the future.

It strikes me (no pun intended) that arguments – or policy choices – in favor of abandoning the armed conflict model because the inherent right of self-defense will provide sufficient counter-terrorism response authority may not fully consider the operational impact of such a shift. From an operational perspective, the scope of authority to employ military force against the al Qaeda belligerent threat pursuant to the inherent right of self-defense is in no way analogous to the authority to do so within an armed conflict framework. This seems especially significant in relation to counter-terror operations. According to the President, the strategic vision for the “next generation” counter-terror military operations is not a “boundless ‘global war on terror’ – but rather a series of persistent, targeted efforts to dismantle specific networks of violent extremists that threaten America.”

Relying exclusively on the inherent right of self-defense would, I suggest, potentially undermine implementing this strategic vision. It seems to me that disruption, and not necessarily destruction, is the logical operational “effect” commanders routinely seek to achieve to implement this strategy. Destruction, when feasible, would obviously contribute to this strategy. It is, however, doubtful that a group like al Qaeda and its affiliates can be completely destroyed – at least to the point that they are brought into complete submission – through the use of military power. Instead, military force can effectively be used to disrupt this opponent, thereby seizing and retaining the initiative and keeping the opponent off balance. Indeed, President Obama signaled the benefit of using military force to achieve this effect when he noted that al Qaeda’s “remaining operatives spend more time thinking about their own safety than plotting against us. They did not direct the attacks in Benghazi or Boston. They have not carried out a successful attack on our homeland since 9/11.”

A key advantage of the armed conflict framework is that it provides the legal maneuver space to employ military force in a manner that will effectively produce this disruptive and degrading effect. In contrast, under a pure self-defense framework, use of military force directed against such networks would necessarily require a determination of imminent threat of attack against the nation. Unlike the armed conflict model, this would arguably make conducting operations to “disrupt” terrorist networks more difficult to justify. I believe this is borne out by the reference to the pre-9/11 self-defense model. While it is true that military force was periodically employed as an act of self-defense during this era, such use seems to have been quite limited and only in response to attacks that already occurred, or at best were imminent in a restrictive interpretation of that term. In short, the range of legally permissible options to use military power to achieve this disruptive effect is inevitably broader in the context of an existing armed conflict than in isolated self-defense actions.

It may, of course, be possible to adopt an interpretation of imminence expansive enough to facilitate the range of operational flexibility needed to achieve this disruptive effect against al Qaeda networks. But this would just shift the legality debate from the legitimacy of continuing an armed conflict model to the legitimacy of the imminence interpretation. Even this would not, however, provide analogous authority to address the al Qaeda belligerent threat. Even if an expanded definition of imminence undergirded a pure self-defense model, it would inevitably result in hesitancy to employ force to disrupt, as opposed to disable, terrorist threats, because of concerns of perceived overreach.

It may be that a shift to this use of force framework is not only inevitable, but likely to come sooner than later. It may also be that such a shift might produce positive second and third order effects, such as improving the perception of legitimacy and mitigating the perception of a boundless war. It will not be without cost, and it is not self-evident that the scope of attack authority will be functionally analogous to that provided by the armed conflict model. Policy may in fact routinely limit the exercise of authority under this model today, but once the legal box is constricted, operationally flexibility will inevitably be degraded. It is for this reason that I believe the administration is unlikely to be too quick to abandon reliance on the AUMF.

High risk of attacks

Stephen F. Hayes 2-10, The Weekly Standard, Rumors of al Qaeda’s Demise, <http://www.weeklystandard.com/articles/rumors-al-qaeda-s-demise_776000.html?page=2>

For five years, the Obama administration has touted its success in the war against al Qaeda. In formal addresses, daily press briefings, and campaign speeches top administration officials have celebrated the “decimation” of al Qaeda and predicted its imminent extinction.

John Brennan, the president’s top adviser on these matters, even took the bold step of putting a timeframe on the end of al Qaeda. “If the decade before 9/11 was the time of al Qaeda’s rise and the decade after 9/11 was the time of its decline, then I believe this decade will be the one that sees its demise,” he said in a speech at the Woodrow Wilson Center in the spring of 2012, not long before he was named CIA director.

We were skeptical of Brennan’s claims at the time. Almost nobody believes them now. The growth of the al Qaeda network and the persistence of the threat it presents is no longer in serious dispute. Experts disagree about the precise shape of al Qaeda and its capabilities. But even those who not long ago were echoing the administration’s line are now worried that al Qaeda currently controls “more territory in the Arab world than it has done at any time in its history,” in the words of CNN’s Peter Bergen.

This puts the Obama administration in a difficult position. Despite its many hopeful claims, al Qaeda is nowhere near defeat. And with Obama’s withdrawal from Iraq, his drawdown in Afghanistan, and his eagerness to end even wars that are not won, the prospect of the demise of al Qaeda grows more distant every day.

In response to this grim reality, or at least in a tacit acknowledgment of it, the rhetoric of the Obama administration has increasingly focused on redefining al Qaeda. No longer is it the vast network described by the Bush administration prosecuting a “global war on terror.” Instead, al Qaeda in the Obama administration’s public descriptions is like a Russian matryoshka doll, growing ever smaller with each iteration.

And now we’ve reached the end. We’ve gone from a global network, to something called “core al Qaeda,” to one man incapable even of effective propaganda. Last week, State Department spokeswoman Marie Harf claimed that Ayman al Zawahiri is “the only one left” of “core al Qaeda.”

It’s an absurd claim. And the context makes it worse.

At a State Department briefing on January 23, reporters asked Harf about a new message from Zawahiri to his followers. Her initial response? “I haven’t seen it.” But moments later, after promising to “take a look or a listen,” she claimed to know enough about its contents to dismiss their significance, saying “this is not new rhetoric we’ve heard from Zawahiri.”

How can you offer assurances about the substance and meaning of a message if you have not heard it? You can’t.

This was the context for her claim that Zawahiri is the only core al Qaeda member still standing. “Look, this is not new rhetoric we’ve heard from Zawahiri. He’s—core al Qaeda in Afghanistan and Pakistan, besides Zawahiri, has essentially the entire leadership been decimated by the U.S. counterterrorism efforts. He’s the only one left. I think he spends, at this point, probably more time worrying about his own personal security than propaganda, but still is interested in putting out this kind of propaganda to remain relevant.”

A day after the briefing, Thomas Joscelyn and Bill Roggio, the indispensable team from the Long War Journal, highlighted Harf’s claims and debunked them. The story might have ended there, but in a decision she probably now regrets, Harf responded. Here is the relevant section of her argument:

I was making the point that of the high-value core al-Qaeda leadership targets the United States has had in our sights, Zawahiri is the only senior AQ leader left from the group that planned 9/11—from core al-Qaeda as we’ve known it. Of course, al-Qaeda core does replace leaders that get taken off the battlefield, but they are replaced in general with younger, less experienced fighters who don’t have the same kind of operational background and who don’t have the same ability to plan external attacks. They are obviously still very dangerous—especially in Pakistan and Afghanistan, and when they partner with other local terrorist groups—but they are by any definition a shadow of what the group used to be. You would be hard-pressed to name another senior AQ leader in the Af-Pak region at -Zawahiri’s, or Abu Yayha al Libi’s, or Atiyah Abdul Rahman’s level (I could go on and on .  .  . ).

And when you read my full statement there, it’s clear that I’m talking about the core al-Qaeda leadership being decimated, not the entire group. It defies logic to argue that I think Zawahiri is literally the only core AQ fighter left.

If Harf believes it defies logic to argue that she thinks Zawahiri is the only core al Qaeda fighter left, she might have done more to explain why she said that Zawahiri is the only core Al Qaeda fighter left.

As the Long War Journal points out, in trying to explain what she meant by her claim that Zawahiri was the “only one left” of “core al Qaeda,” Harf offers several different definitions of that group. There’s senior leadership from “the group that planned 9/11” and “core al Qaeda as we’ve known it” and even new “al Qaeda core leadership” that includes those who replace the ones who have died.

It may seem unfair to pick on Harf. Perhaps she just misspoke in making her claim about Zawahiri. But she’s hardly unqualified to speak on these issues, and there’s no question that her views are representative of Barack Obama’s national security leadership. As Harf pointed out herself, she has “spent six years at the CIA—including three as our spokesperson talking about exactly these issues.” And indeed, the problem isn’t the messenger, it’s the message.

From the earliest days of the Obama presidency, the administration has downplayed threats posed by al Qaeda and its affiliates. On his first day in office, Obama pledged again to close the detention facility at Guantánamo Bay. Three days after the attempted bombing of an airplane over Detroit on Christmas Day in 2009, the president claimed Umar Farouk Abdulmutallab was an “isolated extremist,” despite the fact that the bomber had already detailed for authorities his ties to Al Qaeda in the Arabian Peninsula. When Faisal Shahzad attempted to detonate an SUV packed with explosives in Times Square six months later, Janet Napolitano, secretary of Homeland Security, dismissed it as a “one-off” attempt and prematurely dismissed suggestions that the bomber, who was trained and funded by the Pakistani Taliban, had ties to international terrorists. And for two weeks, despite abundant evidence to the contrary, the fatal attacks in Benghazi were misleadingly portrayed as the result of an angry mob spun up by a YouTube video. When the New York Times tried unsuccessfully to resurrect that discredited line last month, Obama administration officials quietly whispered their approval to reporters who asked about the story.

Attacks will be nuclear

Bunn 13 (Matthew, Valentin Kuznetsov, Martin B. Malin, Yuri Morozov, Simon Saradzhyan, William H. Tobey, Viktor I. Yesin, and Pavel S. Zolotarev. "Steps to Prevent Nuclear Terrorism." Paper, Belfer Center for Science and International Affairs, Harvard Kennedy School, October 2, 2013, Matthew Bunn. Professor of the Practice of Public Policy at Harvard Kennedy School andCo-Principal Investigator of Project on Managing the Atom at Harvard University’s Belfer Center for Science and International Affairs. • Vice Admiral Valentin Kuznetsov (retired Russian Navy). Senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, Senior Military Representative of the Russian Ministry of Defense to NATO from 2002 to 2008. • Martin Malin. Executive Director of the Project on Managing the Atom at the Belfer Center for Science and International Affairs. • Colonel Yuri Morozov (retired Russian Armed Forces). Professor of the Russian Academy of Military Sciences and senior research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, chief of department at the Center for Military-Strategic Studies at the General Staff of the Russian Armed Forces from 1995 to 2000. • Simon Saradzhyan. Fellow at Harvard University’s Belfer Center for Science and International Affairs, Moscow-based defense and security expert and writer from 1993 to 2008. • William Tobey. Senior fellow at Harvard University’s Belfer Center for Science and International Affairs and director of the U.S.-Russia Initiative to Prevent Nuclear Terrorism, deputy administrator for Defense Nuclear Nonproliferation at the U.S. National Nuclear Security Administration from 2006 to 2009. • Colonel General Viktor Yesin (retired Russian Armed Forces). Leading research fellow at the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences and advisor to commander of the Strategic Missile Forces of Russia, chief of staff of the Strategic Missile Forces from 1994 to 1996. • Major General Pavel Zolotarev (retired Russian Armed Forces). Deputy director of the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences, head of the Information and Analysis Center of the Russian Ministry of Defense from1993 to 1997, section head - deputy chief of staff of the Defense Council of Russia from 1997 to 1998., 10/2/2013, “Steps to Prevent Nuclear Terrorism: Recommendations Based on the U.S.-Russia Joint Threat Assessment”, <http://belfercenter.ksg.harvard.edu/publication/23430/steps_to_prevent_nuclear_terrorism.html>)

I. Introduction In 2011, Harvard’s Belfer Center for Science and International Affairs and the Russian Academy of Sciences’ Institute for U.S. and Canadian Studies published “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism.” The assessment analyzed the means, motives, and access of would-be nuclear terrorists, and concluded that the threat of nuclear terrorism is urgent and real. The Washington and Seoul Nuclear Security Summits in 2010 and 2012 established and demonstrated a consensus among political leaders from around the world that nuclear terrorism poses a serious threat to the peace, security, and prosperity of our planet. For any country, a terrorist attack with a nuclear device would be an immediate and catastrophic disaster, and the negative effects would reverberate around the world far beyond the location and moment of the detonation. Preventing a nuclear terrorist attack requires international cooperation to secure nuclear materials, especially among those states producing nuclear materials and weapons. As the world’s two greatest nuclear powers, the United States and Russia have the greatest experience and capabilities in securing nuclear materials and plants and, therefore, share a special responsibility to lead international efforts to prevent terrorists from seizing such materials and plants. The depth of convergence between U.S. and Russian vital national interests on the issue of nuclear security is best illustrated by the fact that bilateral cooperation on this issue has continued uninterrupted for more than two decades, even when relations between the two countries occasionally became frosty, as in the aftermath of the August 2008 war in Georgia. Russia and the United States have strong incentives to forge a close and trusting partnership to prevent nuclear terrorism and have made enormous progress in securing fissile material both at home and in partnership with other countries. However, to meet the evolving threat posed by those individuals intent upon using nuclear weapons for terrorist purposes, the United States and Russia need to deepen and broaden their cooperation. The 2011 “U.S. - Russia Joint Threat Assessment” offered both specific conclusions about the nature of the threat and general observations about how it might be addressed. This report builds on that foundation and analyzes the existing framework for action, cites gaps and deficiencies, and makes specific recommendations for improvement. “The U.S. – Russia Joint Threat Assessment on Nuclear Terrorism” (The 2011 report executive summary): • Nuclear terrorism is a real and urgent threat. Urgent actions are required to reduce the risk. The risk is driven by the rise of terrorists who seek to inflict unlimited damage, many of whom have sought justification for their plans in radical interpretations of Islam**;** by the spread of information about the decades-old technology of nuclear weapons; by the increased availability of weapons-usable nuclear materials; and by globalization, which makes it easier to move people, technologies, and materials across the world. • Making a crude nuclear bomb would not be easy, but is potentially within the capabilities of a technically sophisticated terrorist group, as numerous government studies have confirmed. Detonating a stolen nuclear weapon would likely be difficult for terrorists to accomplish, if the weapon was equipped with modern technical safeguards (such as the electronic locks known as Permissive Action Links, or PALs). Terrorists could, however, cut open a stolen nuclear weapon and make use of its nuclear material for a bomb of their own. • The nuclear material for a bomb is small and difficult to detect, making it a major challenge to stop nuclear smuggling or to recover nuclear material after it has been stolen. Hence, a primary focus in reducing the risk must be to keep nuclear material and nuclear weapons from being stolen by continually improving their security, as agreed at the Nuclear Security Summit in Washington in April 2010. • Al-Qaeda has sought nuclear weapons for almost two decades. The group has repeatedly attempted to purchase stolen nuclear material or nuclear weapons, and has repeatedly attempted to recruit nuclear expertise. Al-Qaeda reportedly conducted tests of conventional explosives for its nuclear program in the desert in Afghanistan. The group’s nuclear ambitions continued after its dispersal following the fall of the Taliban regime in Afghanistan. Recent writings from top al-Qaeda leadership are focused on justifying the mass slaughter of civilians, including the use of weapons of mass destruction, and are in all likelihood intended to provide a formal religious justification for nuclear use. While there are significant gaps in coverage of the group’s activities, al-Qaeda appears to have been frustrated thus far in acquiring a nuclear capability; it is unclear whether the the group has acquired weapons-usable nuclear material or the expertise needed to make such material into a bomb. Furthermore, pressure from a broad range of counter-terrorist actions probably has reduced the group’s ability to manage large, complex projects, but has not eliminated the danger. However, there is no sign the group has abandoned its nuclear ambitions. On the contrary, leadership statements as recently as 2008 indicate that the intention to acquire and use nuclear weapons is as strong as ever.

Extinction

Hellman 8 (Martin E. Hellman, emeritus prof of engineering @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, <http://www.nuclearrisk.org/paper.pdf>)

The threat of nuclear terrorism looms much larger in the public’s mind than the threat of a full-scale nuclear war, yet this article focuses primarily on the latter. An explanation is therefore in order before proceeding. A terrorist attack involving a nuclear weapon would be a catastrophe of immense proportions: “A 10-kiloton bomb detonated at Grand Central Station on a typical work day would likely kill some half a million people, and inflict over a trillion dollars in direct economic damage. America and its way of life would be changed forever.” [Bunn 2003, pages viii-ix]. The likelihood of such an attack is also significant. Former Secretary of Defense William Perry has estimated the chance of a nuclear terrorist incident within the next decade to be roughly 50 percent [Bunn 2007, page 15]. David Albright, a former weapons inspector in Iraq, estimates those odds at less than one percent, but notes, “We would never accept a situation where the chance of a major nuclear accident like Chernobyl would be anywhere near 1% .... A nuclear terrorism attack is a low-probability event, but we can’t live in a world where it’s anything but extremely low-probability.” [Hegland 2005]. In a survey of 85 national security experts, Senator Richard Lugar found a median estimate of 20 percent for the “probability of an attack involving a nuclear explosion occurring somewhere in the world in the next 10 years,” with 79 percent of the respondents believing “it more likely to be carried out by terrorists” than by a government [Lugar 2005, pp. 14-15]. I support increased efforts to reduce the threat of nuclear terrorism, but that is not inconsistent with the approach of this article. Because terrorism is one of the potential trigger mechanisms for a full-scale nuclear war, the risk analyses proposed herein will include estimating the risk of nuclear terrorism as one component of the overall risk. If that risk, the overall risk, or both are found to be unacceptable, then the proposed remedies would be directed to reduce which- ever risk(s) warrant attention. Similar remarks apply to a number of other threats (e.g., nuclear war between the U.S. and China over Taiwan). his article would be incomplete if it only dealt with the threat of nuclear terrorism and neglected the threat of full- scale nuclear war. If both risks are unacceptable, an effort to reduce only the terrorist component would leave humanity in great peril. In fact, society’s almost total neglect of the threat of full-scale nuclear war makes studying that risk all the more important. The cosT of World War iii The danger associated with nuclear deterrence depends on both the cost of a failure and the failure rate.3 This section explores the cost of a failure of nuclear deterrence, and the next section is concerned with the failure rate. While other definitions are possible, this article defines a failure of deterrence to mean a full-scale exchange of all nuclear weapons available to the U.S. and Russia, an event that will be termed World War III. Approximately 20 million people died as a result of the first World War. World War II’s fatalities were double or triple that number—chaos prevented a more precise deter- mination. In both cases humanity recovered, and the world today bears few scars that attest to the horror of those two wars. Many people therefore implicitly believe that a third World War would be horrible but survivable, an extrapola- tion of the effects of the first two global wars. In that view, World War III, while horrible, is something that humanity may just have to face and from which it will then have to recover. In contrast, some of those most qualified to assess the situation hold a very different view. In a 1961 speech to a joint session of the Philippine Con- gress, General Douglas MacArthur, stated, “Global war has become a Frankenstein to destroy both sides. … If you lose, you are annihilated. If you win, you stand only to lose. No longer does it possess even the chance of the winner of a duel. It contains now only the germs of double suicide.” Former Secretary of Defense Robert McNamara ex- pressed a similar view: “If deterrence fails and conflict develops, the present U.S. and NATO strategy carries with it a high risk that Western civilization will be destroyed” [McNamara 1986, page 6]. More recently, George Shultz, William Perry, Henry Kissinger, and Sam Nunn4 echoed those concerns when they quoted President Reagan’s belief that nuclear weapons were “totally irrational, totally inhu- mane, good for nothing but killing, possibly destructive of life on earth and civilization.” [Shultz 2007] Official studies, while couched in less emotional terms, still convey the horrendous toll that World War III would exact: “The resulting deaths would be far beyond any precedent. Executive branch calculations show a range of U.S. deaths from 35 to 77 percent (i.e., 79-160 million dead) … a change in targeting could kill somewhere between 20 million and 30 million additional people on each side .... These calculations reflect only deaths during the first 30 days. Additional millions would be injured, and many would eventually die from lack of adequate medical care … millions of people might starve or freeze during the follow- ing winter, but it is not possible to estimate how many. … further millions … might eventually die of latent radiation effects.” [OTA 1979, page 8] This OTA report also noted the possibility of serious ecological damage [OTA 1979, page 9], a concern that as- sumed a new potentiality when the TTAPS report [TTAPS 1983] proposed that the ash and dust from so many nearly simultaneous nuclear explosions and their resultant fire- storms could usher in a nuclear winter that might erase homo sapiens from the face of the earth, much as many scientists now believe the K-T Extinction that wiped out the dinosaurs resulted from an impact winter caused by ash and dust from a large asteroid or comet striking Earth. The TTAPS report produced a heated debate, and there is still no scientific consensus on whether a nuclear winter would follow a full-scale nuclear war. Recent work [Robock 2007, Toon 2007] suggests that even a limited nuclear exchange or one between newer nuclear-weapon states, such as India and Pakistan, could have devastating long-lasting climatic consequences due to the large volumes of smoke that would be generated by fires in modern megacities. While it is uncertain how destructive World War III would be, prudence dictates that we apply the same engi- neering conservatism that saved the Golden Gate Bridge from collapsing on its 50th anniversary and assume that preventing World War III is a necessity—not an option.

Lashout causes nuclear war

Barrett et al. 13—PhD in Engineering and Public Policy from Carnegie Mellon University, Fellow in the RAND Stanton Nuclear Security Fellows Program, and Director of Research at Global Catastrophic Risk Institute—AND Seth Baum, PhD in Geography from Pennsylvania State University, Research Scientist at the Blue Marble Space Institute of Science, and Executive Director of Global Catastrophic Risk Institute—AND Kelly Hostetler, BS in Political Science from Columbia and Research Assistant at Global Catastrophic Risk Institute (Anthony, 24 June 2013, “Analyzing and Reducing the Risks of Inadvertent Nuclear War Between the United States and Russia,” Science & Global Security: The Technical Basis for Arms Control, Disarmament, and Nonproliferation Initiatives, Volume 21, Issue 2, Taylor & Francis)

War involving significant fractions of the U.S. and Russian nuclear arsenals, which are by far the largest of any nations, could have globally catastrophic effects such as severely reducing food production for years, 1 potentially leading to collapse of modern civilization worldwide, and even the extinction of humanity. 2 Nuclear war between the United States and Russia could occur by various routes, including accidental or unauthorized launch; deliberate first attack by one nation; and inadvertent attack. In an accidental or unauthorized launch or detonation, system safeguards or procedures to maintain control over nuclear weapons fail in such a way that a nuclear weapon or missile launches or explodes without direction from leaders. In a deliberate first attack, the attacking nation decides to attack based on accurate information about the state of affairs. In an inadvertent attack, the attacking nation mistakenly concludes that it is under attack and launches nuclear weapons in what it believes is a counterattack. 3 (Brinkmanship strategies incorporate elements of all of the above, in that they involve intentional manipulation of risks from otherwise accidental or inadvertent launches. 4 ) Over the years, nuclear strategy was aimed primarily at minimizing risks of intentional attack through development of deterrence capabilities, and numerous measures also were taken to reduce probabilities of accidents, unauthorized attack, and inadvertent war. For purposes of deterrence, both U.S. and Soviet/Russian forces have maintained significant capabilities to have some forces survive a first attack by the other side and to launch a subsequent counter-attack. However, concerns about the extreme disruptions that a first attack would cause in the other side's forces and command-and-control capabilities led to both sides’ development of capabilities to detect a first attack and launch a counter-attack before suffering damage from the first attack. 5 Many people believe that with the end of the Cold War and with improved relations between the United States and Russia, the risk of East-West nuclear war was significantly reduced. 6 However, it also has been argued that inadvertent nuclear war between the United States and Russia has continued to present a substantial risk. 7 While the United States and Russia are not actively threatening each other with war, they have remained ready to launch nuclear missiles in response to indications of attack. 8 False indicators of nuclear attack could be caused in several ways. First, a wide range of events have already been mistakenly interpreted as indicators of attack, including weather phenomena, a faulty computer chip, wild animal activity, and control-room training tapes loaded at the wrong time. 9 Second, terrorist groups or other actors might cause attacks on either the United States or Russia that resemble some kind of nuclear attack by the other nation by actions such as exploding a stolen or improvised nuclear bomb, 10 especially if such an event occurs during a crisis between the United States and Russia. 11 A variety of nuclear terrorism scenarios are possible. 12 Al Qaeda has sought to obtain or construct nuclear weapons and to use them against the United States. 13 Other methods could involve attempts to circumvent nuclear weapon launch control safeguards or exploit holes in their security. 14 It has long been argued that the probability of inadvertent nuclear war is significantly higher during U.S.–Russian crisis conditions, 15 with the Cuban Missile Crisis being a prime historical example. It is possible that U.S.–Russian relations will significantly deteriorate in the future, increasing nuclear tensions. There are a variety of ways for a third party to raise tensions between the United States and Russia, making one or both nations more likely to misinterpret events as attacks. 16

## legal regimes adv

The administration has asserted TK is legally justified under armed conflict AND self-defense authority

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As to the jus ad bellum, 124 the government based its authority to attack 125 targets outside of the armed conflicts in Iraq and Afghanistan on three concepts.126 The government has not articulated which of these principles it relied upon or how the three concepts legally interacted.127 First, the U.S. is engaged in an ongoing non-international armed conflict with al Qaeda, the Taliban, and associated forces around the world, authorized by the AUMF.128 Second, the U.S. may be operating within a given territorial state, such as Yemen or Pakistan, with that state’s consent. That consent may take the form of inviting the U.S. to support that nation in its own preexisting NIAC with a particular purported branch or associated force of al Qaeda or the Taliban.129 Such a framework tracks the same logic as the multinational/transnational NIACs of Iraq and Afghanistan, where the sovereign territorial states have invited the U.S. to remain on their territory. Alternatively, that consent may be given simply to allow the U.S. to intervene on the sovereign territory of the state in order to pursue the U.S.’s armed conflict with al Qaeda, the Taliban, and/or associated forces in that particular instance. This consent need not be public; it need not be officially or formally articulated; it may be construed by silence; and it may indeed be gleaned from lack of objection after the attack has occurred.130 Third, the U.S. maintains a seemingly separate legal justification for attacks against al Qaeda, the Taliban, and/or associated forces targets in any country based on self-defense. Such self-defense would allow the United States to attack if the territorial state is “unable or unwilling” to obviate the threat from terrorists on its territory. Furthermore, a self-defense claim may be legally sound if a state cannot control its own territory, or is a “failed state.”131 Meanwhile, some American academics began to argue for a theory—reportedly developed by Koh132—of “elongated imminence” based on “battered spouse syndrome.”133

• As to jus in bello rules applicable to the geographically unbounded NIAC against al Qaeda, the Taliban, and/or associated forces, and associated targeting operations, including against U.S. citizens, the government “takes great care to adhere to the principles” of distinction and proportionality, as defined in IHL.134 While the CIA and any military agencies acting under its orders or authority are to act in accordance with IHL “principles” in their targeting, it is not clear whether the CIA can or will be held accountable for any violations of IHL, or whether, particularly when acting in “covert operations,” they would be subject to criminal liability under the Uniform Code of Military Justice or the War Crimes Act.135

• In February 2013, an unsigned and undated Department of Justice White Paper on “The Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is a Senior Operational Leader of Al-Qa'ida or an Associated Force" publicly surfaced.136 While the While Paper does not provide the DOJ's comprehensive legal analysis, it does serve as a sort of "folk international law" primer, conflating concepts, rules, and principles from IHL, IHRL, and jus ad bellum. For instance, the White Paper invokes a concept of imminence that appears to be unrecognizable under longstanding IHRL and jus ad bellum11 It also seems to take an extraordinarily narrow view under international law of the Administration's obligation to seek the capture of terrorists away from "hot" battlefields before using lethal force.138 Finally, it argues for territorially unbounded NIAC by way of analogy.139

Combined, this remarkably opaque collection of purported international legal bases for the CIA and, perhaps less so, the military to target members of al Qaeda, the Taliban, and associated forces in any country at any time may make some nostalgic for the days when the government simply rejected the applicability of international law to the war on terror. These legal arguments and positions indicate that while the Bush Administration coined and regularly used the term "war on terror," the Obama Administration much more actively pursues an armed conflict with al Qaeda, the Taliban, and associated forces in & global context}40 That is, it extends the conduct of hostilities, as opposed to detention operations or CIA capture operations, to multiple sites around the world, and explicitly states that it is doing so pursuant to an armed conflict with a terrorist organization and its associates. In doing so, the Obama Administration purportedly expands the scope of the applicability of IHL to any place that the United States targets these individuals, typically with only a passing reference to the “sovereignty” of the state on which the terrorist is being targeted.141 It then states that certain IHL principles are being applied—or at least considered—by a clandestine branch of the government whose accountability to the rules of IHL is unclear.142

Whether or not it is meaningfully different, and whether or not Obama Administration officials lament the condition in which they found the country and the government, it is certainly the case that President Obama made the “war against al Qaeda” much more than a rhetorical flourish or a tool that is mainly used to capture individuals abroad and bring them into secretive prisons or Guantánamo. The upshot is that the Obama Administration treats the war against al Qaeda and associated forces much more as a war in the sense of actual armed attacks against targets all over the world than did the Bush Administration. While there had been several instances of such treatment during the Bush Administration, perhaps most infamously the 2002 attack in Yemen, the scale and speed of the attacks under President Obama is far greater than anything carried out by his predecessor.

The Obama Administration’s policy shift occurs within an entirely different rhetorical environment and in a context in which this approach— which one could reasonably call “global war”—is articulated through the language of IHL. After the profound dismay felt by many in the legal profession and academia over the legal memoranda provided to President Bush, the Obama Administration appoints some of the country’s finest international lawyers, many of them well known to the IHL and human rights lawyers who have been fighting against the war on terror throughout this story.143 Indeed, many of the international lawyers who join the Obama Administration have been involved in legal or scholarly efforts to curtail the Bush Administration’s pursuit of the global war on terror. In this sense, as we head into the reactions by IHL and IHRL to these positions, there seems to be far more benefit of the doubt granted to this Administration’s approach to the conflict.144

In a strange coda to the arguments and positions taken by the government throughout these debates, a number of officials suggest by the end of this phase that killing suspected terrorists has become legally and logistically easier than detaining them. Indeed, many have argued that this is precisely what is happening in various situations around the world— whether in Iraq and Afghanistan, as troop drawdown is contemplated in earnest, or in Somalia,145 Yemen,146 and Pakistan 147— with members of the armed forces and drone operators reportedly finding it easier to kill targets148 than to take them into U.S. custody.149

That erodes international norm development for both humanitarian and human rights law

Laurie Blank, Director, International Humanitarian Law Clinic, Emory Law School, 2012, Targeted Strikes: The Consequences of Blurring the Armed Conflict and Self-Defense Justifications, http://www.wmitchell.edu/lawreview/Volume38/documents/11.BlankFINAL.pdf

As noted in the introduction to this article, maintaining the separation between and independence of jus ad bellum and jus in bello is vital for the effective application of the law and protection of persons in conflict. The discussion that follows will refer to both the LOAC and the law of self-defense extensively in a range of situations in order to analyze and highlight the risks of blurring the lines between the two paradigms. However, it is important to note that the purpose here is not to conflate the two paradigms, but to emphasize the risks inherent in blurring these lines. Preserving the historic separation remains central to the application of both bodies of law, to the maintenance of international security, and to the regulation of the conduct of hostilities.

III. BLURRING THE LINES

The nature of the terrorist threat the United States and other states face does indeed raise the possibility that both the armed conflict and the self-defense paradigms are relevant to the use of targeted strikes overall. The United States has maintained for the past ten years that it is engaged in an armed conflict with al Qaeda66 and, notwithstanding continued resistance to the notion of an armed conflict between a state and a transnational terrorist group in certain quarters, there is general acceptance that the scope of armed conflict can indeed encompass such a state versus non-state conflict. Not all U.S. counterterrorism measures fit within the confines of this armed conflict, however, with the result that many of the U.S. targeted strikes over the past several years may well fit more appropriately within the self-defense paradigm. The existence of both paradigms as relevant to targeted strikes is not inherently problematic. It is the United States’ insistence on using reference to both paradigms as justification for individual attacks and the broader program of targeted strikes that raises significant concerns for the use of international law and the protection of individuals by blurring the lines between the key parameters of the two paradigms.

A. Location of Attacks: International Law and the Scope of the Battlefield

The distinct differences between the targeting regimes in armed conflict and in self-defense and who can be targeted in which circumstances makes understanding the differentiation between the two paradigms essential to lawful conduct in both situations. The United States has launched targeted strikes in Afghanistan, Pakistan, Yemen, Somalia, and Syria during the past several years. The broad geographic range of the strike locations has produced significant questions—as yet mostly unanswered— and debate regarding the parameters of the conflict with al Qaeda.67 The U.S. armed conflict with al Qaeda and other terrorist groups has focused on Afghanistan and the border regions of Pakistan, but the United States has launched an extensive campaign of targeted strikes in Yemen and some strikes in Somalia in the past year as well. In the early days of the conflict, the United States seemed to trumpet the notion of a global battlefield, in which the conflict with al Qaeda extended to every corner of the world.68 Others have argued that conflict, even one with a transnational terrorist group, can only take place in limited, defined geographic areas.69 At present, the United States has stepped back from the notion of a global battlefield, although there is little guidance to determine precisely what factors influence the parameters of the zone of combat in the conflict with al Qaeda.70

Traditionally, the law of neutrality provided the guiding framework for the parameters of the battlespace in an international armed conflict. When two or more states are fighting and certain other states remain neutral, the line between the two forms the divider between the application of the laws of war and the law of neutrality.71 The law of neutrality is based on the fundamental principle that neutral territory is inviolable72 and focuses on three main goals: (1) contain the spread of hostilities, particularly by keeping down the number of participants; (2) define the legal rights of parties and nonparties to the conflict; and (3) limit the impact of war on nonparticipants, especially with regard to commerce.73 In this way, neutrality law leads to a geographic-based framework in which belligerents can fight on belligerent territory or the commons, but must refrain from any operations on neutral territory. In essence, the battlespace in a traditional armed conflict between two or more states is anywhere outside the sovereign territory of any of the neutral states.74 The language of the Geneva Conventions tracks this concept fairly closely. Common Article 2, which sets forth the definition of international armed conflict, states that such conflict occurs in “all cases of declared war or . . . any other armed conflict which may arise between two or more of the High Contracting Parties.”75 In Common Article 3, noninternational armed conflicts include conflicts between a state and non-state armed groups that are “occurring in the territory of one of the High Contracting Parties.”76 Both of these formulations tie the location of the armed conflict directly to the territory of one or more belligerent parties.

The neutrality framework as a geographic parameter is left wanting in today’s conflicts with terrorist groups, however. First, as a formal matter, the law of neutrality technically only applies in cases of international armed conflict.77 Even analogizing to the situations we face today is highly problematic, however, because today’s conflicts not only pit states against non-state actors, but because those actors and groups often do not have any territorial nexus beyond wherever they can find safe haven from government intrusion. As state and non-state actors have often shifted unpredictably and irregularly between acts characteristic of wartime and those characteristic of not-wartime[, t]he unpredictable and irregular nature of these shifts makes it difficult to know whether at any given moment one should understand them as armies and their enemies or as police forces and their criminal adversaries.78

Simply locating terrorist groups and operatives does not therefore identify the parameters of the battlefield—the fact that the United States and other states use a combination of military operations and law enforcement measures to combat terrorism blurs the lines one might look for in defining the battlefield. In many situations, “the fight against transnational jihadi groups . . . largely takes place away from any recognizable battlefield.”79

Second, a look at U.S. jurisprudence in the past and today demonstrates a clear break between the framework applied in past wars and the views courts are taking today. U.S. courts during World War I viewed “the port of New York [as] within the field of active [military] operations.”80 Similarly, a 1942 decision upholding the lawfulness of an order evacuating JapaneseAmericans to a military area stated plainly that the field of military operation is not confined to the scene of actual physical combat. Our cities and transportation systems, our coastline, our harbors, and even our agricultural areas are all vitally important in the all-out war effort in which our country must engage if our form of government is to survive.81

In each of those cases, the United States was a belligerent in an international armed conflict; the law of neutrality mandated that U.S. territory was belligerent territory and therefore part of the battlefield or combat zone. The courts take a decidedly different view in today’s conflicts, however, consistently referring to the United States as “outside a zone of combat,”82 “distant from a zone of combat,”83 or not within any “active [or formal] theater of war,”84 even while recognizing the novel geographic nature of the conflict. Even more recently, in Al Maqaleh v. Gates, both the District Court and the Court of Appeals distinguished between Afghanistan, “a theater of active military combat,”85 and other areas (including the United States), which are described as “far removed from any battlefield.”86 In a traditional belligerency-neutrality framework, one would expect to see U.S. territory viewed as part of the battlefield; the fact that courts consistently trend the other way highlights both the difference in approach and the uncertainty involved in defining today’s conflicts.

The current U.S. approach of using both the armed conflict paradigm and the self-defense paradigm as justifications for targeted strikes without further clarification serves to exacerbate the legal challenges posed by the geography of the conflict, at both a theoretical and a practical level. First, at the most fundamental level, uncertainty regarding the parameters of the battlefield has significant consequences for the safety and security of individuals. During armed conflict, the LOAC authorizes the use of force as a first resort against those identified as the enemy, whether insurgents, terrorists or the armed forces of another state. In contrast, human rights law, which would be the dominant legal framework in areas where there is no armed conflict, authorizes the use of force only as a last resort.87 Apart from questions regarding the application of human rights law during times of war, which are outside the scope of this article, the distinction between the two regimes is nonetheless starkest in this regard. The former permits targeting of individuals based on their status as members of a hostile force; the latter—human rights law—permits lethal force against individuals only on the basis of their conduct posing a direct threat at that time. The LOAC also accepts the incidental loss of civilian lives as collateral damage, within the bounds of the principle of proportionality;88 human rights law contemplates no such casualties. These contrasts can literally mean the difference between life and death in many situations. Indeed, “If it is often permissible to deliberately kill large numbers of humans in times of armed conflict, even though such an act would be considered mass murder in times of peace, then it is essential that politicians and courts be able to distinguish readily between conflict and nonconflict, between war and peace.”89 However, the overreliance on flexibility at present means that U.S. officials do not distinguish between conflict and non-conflict areas but rather simply use the broad sweep of armed conflict and/or self-defense to cover all areas without further delineation.

Second, on a broader level of legal application and interpretation, the development of the law itself is affected by the failure to delineate between relevant legal paradigms. “Emerging technologies of potentially great geographic reach raise the issue of what regime of law regulates these activities as they spread,”90 and emphasize the need to foster, rather than hinder, development of the law in these areas. Many argue that the ability to use armed drones across state borders without risk to personnel who could be shot down or captured across those borders has an expansive effect on the location of conflict and hostilities. In effect, they suggest that it is somehow “easier” to send unmanned aircraft across sovereign borders because there is no risk of a pilot being shot down and captured, making the escalation and spillover of conflict more likely.91 Understanding the parameters of a conflict with terrorist groups is important, for a variety of reasons, none perhaps more important than the life-and-death issues detailed above. By the same measure, understanding the authorities for and limits on a state’s use of force in self-defense is essential to maintaining orderly relations between states and to the ability of states to defend against attacks, from whatever quarter. The extensive debates in the academic and policy worlds highlight the fundamental nature of both inquiries. However, the repeated assurances from the U.S. government that targeted strikes are lawful in the course of armed conflict or in exercise of the legitimate right of self-defense—without further elaboration and specificity—allows for a significantly less nuanced approach. As long as a strike seems to fit into the overarching framework of helping to defend the United States against terrorism, there no longer would be a need to carefully delineate the parameters of armed conflict and self-defense, where the outer boundaries of each lie and how they differ from each other. From a purely theoretical standpoint, this limits the development and implementation of the law. Even from a more practical policy standpoint, the United States may well find that the blurred lines prove detrimental in the future when it seeks sharper delineations for other purposes.

The impact is unrestrained use of force in conflict

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The central purpose of the convergence of IHL and IHRL is to increase the protection of individuals in armed conflict. The notion behind the insistence that IHL and IHRL are part of the same discipline suggests that IHL is part of the far larger and more broadly applicable legal realm of IHRL. Indeed, the very idea of the “humanization of humanitarian law”159 is that the cold, brutal balancing of IHL, its perceived deference to the military and the needs of the state is opened up and mitigated by a body of law that protects the individual’s human rights against the state. Yet here the story flips: It is IHRL that seems to become part of IHL. It is IHRL that, by the end of our narrative, seems to be brought into the service of conflict, to act not as a powerful check on the brute force of the sovereign, not as the voice of the international community against those who wish to prioritize national security over individual liberties, but rather as a means to regulate the use of lethal violence. Having argued vociferously that IHRL applies in all situations of armed conflict at all times in order to protect individuals, the argument suddenly turns in the other direction. It becomes possible to say that IHRL can be utilized to allow for one state to invade another state’s territory in order to murder individuals without an attempt to arrest, detain, charge, and try these individuals. What is so striking in this view is how well—if that is the right word—the convergence argument worked, or at least how much work convergence ended up doing. Remarkably, many who wish to justify a far broader and even more aggressive CIA drone program cite convergence as a basis for doing so.160

For the application of IHL, on the other hand, the dominant assumption of convergence—that human rights law and IHL are part of the same general field, that they apply simultaneously, and that they are part of the same conversation—may have had the effect of loosening the boundaries around the field of application of IHL. As the two bodies of law began to be used interchangeably—as an attack utilizing a five hundred pound bomb is analogized to a police officer using a weapon when faced with the imminent danger of a hostage situation—one effect on the perception of IHL may be that it is no longer seen as a tightly controlled body of law. As many leading IHL lawyers warned in 2001 and 2002, once IHL is applied, many ugly things that we generally see as illegal, as outside the realm of rule of law, suddenly become lawful. Those IHRL lawyers who argued that IHRL applies simultaneously to IHL during armed conflict may have contributed to the blurring of the line between war and not-war.

That causes global war

Ryan Goodman, Anne and Joel Ehrenkranz Professor of Law, New York University School of Law, December 2009, CONTROLLING THE RECOURSE TO WAR BY MODIFYING JUS IN BELLO, Yearbook of International Humanitarian Law / Volume 12

A substantial literature exists on the conflation of jus ad bellum and jus in bello. However, the consequences for the former side of the equation – the resort to war – is generally under-examined. Instead, academic commentary has focused on the effects of compliance with humanitarian rules in armed conflict and, in particular, the equality of application principle. In this section, I attempt to help correct that imbalance.

In the following analysis, I use the (admittedly provocative) short-hand labels of ‘desirable’ and ‘undesirable’ wars. The former consists of efforts that aim to promote the general welfare of foreign populations such as humanitarian interventions and, on some accounts, peacekeeping operations. The latter – undesirable wars – include conflicts that result from security spirals that serve neither state’s interest and also include predatory acts of aggression.

4.1.1 Decreased likelihood of ‘desirable wars’

A central question in debates about humanitarian intervention is whether the international community should be more concerned about the prospect of future Kosovos – ambitious military actions without clear legal authority – or future Rwandas – inaction and deadlock at the Security Council. Indeed, various institutional designs will tend to favor one of those outcomes over the other. In 1999, Kofi Annan delivered a powerful statement that appeared to consider the prospect of repeat Rwandas the greater concern; and he issued a call to arms to support the ‘developing international norm in favor of intervention to protect civilians from wholesale slaughter’.95 Ifoneassumesthatthereis,indeed,aneedforcontinuedorgreatersupport for humanitarian uses of force, Type I erosions of the separation principle pose a serious threat to that vision. And the threat is not limited to unilateral uses of force. It also applies to military operations authorized by the Security Council. In short, all ‘interventions to protect civilians from wholesale slaughter’ are affected.

Two developments render desirable interventions less likely. First, consider implications of the Kosovo Commission/ICISS approach. The scheme imposes greater requirements on armed forces engaged in a humanitarian mission with respect to safeguarding civilian ives.96 If that scheme is intended to smoke out illicit intent,97 it is likely to have perverse effects: suppressing sincere humanitarian efforts at least on the margins. Actors engaged in a bona fide humanitarian intervention generally tend to be more protective of their own armed forces than in other conflicts. It is instructive to consider, for instance, the precipitous US withdrawal from the UN mission in Somalia – code-named Operation Restore Hope – after the loss of eighteen American soldiers in the Battle of Mogadishu in 1993, and the ‘lesson’ that policymakers drew from that conflict.98 Additionally, the Kosovoc ampaign – code-named Operation Noble Anvil – was designed to be a ‘zero-casualty war’ for US soldiers, because domestic public support for the campaign was shallow and unstable. The important point is that the Kosovo Commission/ICISS approach would impose additional costs on genuine humanitarian efforts, for which it is already difficult to build and sustain popular support. As a result, we can expect to see fewer bona fide interventions to protect civilians from atrocities.99 Notably, such results are more likely to affect two types of states: states with robust, democratic institutions that effectively reflect public opinion and states that highly value compliance with jus in bello. Both of those are the very states that one would most want to incentivize to initiate and participate in humanitarian interventions.

The second development shares many of these same consequences. Consider the implications of the British House of Lords decision in Al-Jedda which cast doubt on the validity of derogations taken in peacekeeping operations as well as other military efforts in which the homeland is not directly at stake and the state could similarly withdraw. The scheme imposes a tax on such interventions by precluding the government from adopting measures that would otherwise be considered lawful and necessary to meet exigent circumstances related to the conflict. Such extraordinary constraints in wartime may very well temper the resolve to engage in altruistic intervention and military efforts that involve similar forms of voluntarism on the part of the state. Such a legal scheme may thus yield fewer such operations and the participation of fewer states in such multilateral efforts. And, the impact of the scheme should disproportionately affect the very states that take international human rights obligations most seriously.

Notably, in these cases, the disincentives might weigh most heavily on third parties: states that decide whether and to what degree to participate in a coalition with the principal intervener. It is to be expected that the commitment on the part of the principal intervener will be stronger, and thus not as easily shifted by the erosion of the separation principle. The ability, however, to hold together a coalition of states is made much more difficult by these added burdens. Indeed, as the United States learned in the Kosovo campaign, important European allies were wary about the intervention, in part due to its lack of an international legal pedigree. And the weakness of the alliance, including German and Italian calls for an early suspension of the bombing campaign, impeded the ability to wage war in the first place. It may be these third party states and their decision whether to join a humanitarian intervention where the international legal regime matters most. Without such backing of important allies, the intervention itself is less likely to occur. It is also those states – the more democratic, the more rights respecting, and the more law abiding – that the international regime should prefer to be involved in these kinds of interventions.

The developments regulating jus ad bellum through jus in bello also threaten to make ‘undesirable wars’ more likely. In previous writing, I argue that encouraging states to frame their resort to force through humanitarian objectives rather than other rationales would, in the aggregate, reduce the overall level of disputes that result in uncontrolled escalation and war.100 A reverse relationship also holds true. That is, encouraging states to forego humanitarian rationales in favor of other justifications for using force may culminate in more international disputes ending in uncontrolled escalation and war. This outcome is especially likely to result from the pressures created by Type I erosions of the separation principle.

First, increasing the tax on humanitarian interventions (the Kosovo Commission/ICISS approach) and ‘wars of choice’ (the Al-Jedda approach) would encourage states to justify their resort to force on alternative grounds. For example, states would be incentivized to invoke other legitimated frameworks – such as security rationales involving the right to self-defense, collective self-defense, anticipatory self-defense, and traditional threats to international peace and security. And, even if military action is pursued through the Security Council, states may be reluctant to adopt language (in resolutions and the like) espousing or emphasizing humanitarian objectives.

Second, the elevation of self-regarding – security and strategic – frameworks over humanitarian ones is more likely to lead to uncontrolled escalation and war. A growing body of social science scholarship demonstrates that the type of issue in dispute can constitute an important variable in shaping the course of interstate hostilities. The first generation of empirical scholarship on the origins of war did not consider this dimension. Political scientists instead concentrated on features of the international system (for example, the distribution of power among states) and on the characteristics of states (for example, forms of domestic governance structures) as the key explanatory variables. Research agendas broadened considerably, however, in subsequent years. More recently, ‘[s]everal studies have identified substantial differences in conflict behavior over different types of issues’.101 The available evidence shows that states are significantly more inclined to fight over particular types of issues that are elevated in a dispute, despite likely overall material and strategic losses.102 Academic studies have also illuminated possible causal explanations for these empirical patterns. Specifically, domestic (popular and elite) constituencies more readily support bellicose behavior by their government when certain salient cultural or ideological issues are in contention. Particular issue areas may also determine the expert communities (humanitarian versus security mindsets) that gain influence in governmental circles – a development that can shape the hard-line or soft-line strategies adopted in the course of the dispute. In short, these links between domestic political processes and the framing of international disputes exert significant influence on whether conflicts will eventually culminate in war.

Third, a large body of empirical research demonstrates that states will routinely engage in interstate disputes with rivals and that those disputes which are framed through security and strategic rationales are more likely to escalate to war. Indeed, the inclusion of a humanitarian rationale provides windows of opportunity to control and deescalate a conflict. Thus, eliminating or demoting a humanitarian rationale from a mix of justifications (even if it is not replaced by another rationale) can be independently destabilizing. Espousing or promoting security rationales, on the other hand, is more likely to culminate in public demands for increased bellicosity, unintended security spirals, and military violence.103

Importantly, these effects may result even if one is skeptical about the power of international law to influence state behavior directly. It is reasonable to assume that international law is unlikely to alter the determination of a state to wage war, and that international law is far more likely to influence only the justificatory discourse states employ while proceeding down the warpath. However, as I argue in my earlier work, leaders (of democratic and nondemocratic) states become caught in their official justifications for military campaigns. Consequently, framing the resort to force as a pursuit of security objectives, or adding such issues to an ongoing conflict, can reshape domestic political arrangements, which narrows the subsequent range of policy options. Issues that initially enter a conflict due to disingenuous representations by political leaders can become an authentic part of the dispute over time. Indeed, the available social science research, primarily qualitative case studies, is even more relevant here. A range of empirical studies demonstrate such unintended consequences primarily in the case of leaders employing security-based and strategic rationales to justify bellicose behavior.104 A central finding is that pretextual and superficial justifications can meaningfully influence later stages of the process that shape popular and elite conceptions of the international dispute. And it is those understandings that affect national security strategies and the ladder of escalation to war. Indeed, one set of studies – of empires – suggests these are mechanisms for powerful states entering into disastrous military campaigns that their leaders did not initially intend.

TK self-defense norms modeled globally --- causes global war

Fisk & Ramos 13 (Kerstin Fisk --- PhD in Political Science focusing on interstate war @ Claremont Graduate University, Jennifer M. Ramos-- PhD in Polisci and Professor @ Loyola Marymount focusing on norms and foreign policy, including drone warfare and preventative use of force, “Actions Speak Louder Than Words: Preventive Self-Defense as a Cascading Norm” 15 APR 2013, International Studies Perspectives (2013), 1–23)

Conclusion

Preventive self-defense entails waging a war or an attack by choice, in order to prevent a suspected enemy from changing the status quo in an unfavorable direction. Prevention is acting in anticipation of a suspected latent threat that might fully emerge someday. One might rightfully point out that preventive strikes are nothing new—the Iraq War is simply a more recent example in a long history of the preventive use of force. The strategic theorist Colin Gray (2007:27), for example, argues that “far from being a rare and awful crime against an historical norm, preventive war is, and has always been, so common, that its occurrence seems remarkable only to those who do not know their history.” Prevention may be common throughout history, but this does not change the fact that it became increasingly difficult to justify after World War II, as the international community developed a core set of normative principles to guide state behavior, including war as a last resort. The threshold for war was set high, imposing a stringent standard for states acting in self-defense. Gray concedes that there has been a “slow and erratic, but nevertheless genuine, growth of a global norm that regards the resort to war as an extraordinary and even desperate measure” and that the Iraq war set a “dangerous precedent” (44). Although our cases do not provide a definitive answer for whether a preventive self-defense norm is diffusing, they do provide some initial evidence that states are re-orienting their military and strategic doctrines toward offense. In addition, these states have all either acquired or developed unmanned aerial vehicles for the purposes of reconnaissance, surveillance, and/or precision targeting.

Thus, the results of our plausibility probe provide some evidence that the global norm regarding the use of force as a last resort is waning, and that **a preventive self-defense norm is emerging and cascading following the example set by the U**nited **S**tates. At the same time, there is variation among our cases in the extent to which they apply the strategy of self-defense. China, for example, has limited their adaption of this strategy to targeted killings, while Russia has declared their strategy to include the possibility of a preventive nuclear war. Yet, the preventive self-defense strategy is not just for powerful actors. Lesser powers may choose to adopt it as well, though perhaps only implementing the strategy against actors with equal or lesser power. Research in this vein would compliment our analyses herein.

With the proliferation of technology in a globalized world, it seems only a matter of time before countries that do not have drone technology are in the minority. While preventive self-defense strategies and drones are not inherently linked, current rhetoric and practice do tie them together. Though it is likely far into the future**, it is all the more important to consider the final stage of norm evolution—internalization—for this particular norm**. While scholars tend to think of norms as “good,” this one is not so clear-cut. If the preventive self-defense norm is taken for granted, integrated into practice without further consideration, it inherently changes the functioning of international relations. And unmanned aerial vehicles, by reducing the costs of war, make claims of preventive self-defense more palatable to the public. Yet **a global norm of preventive self-defense is likely to be** destabilizing**,** leading to more war **in the international system**, not less. It clearly violates notions of just war principles—jus ad bellum. **The U**nited **S**tates **has set a dangerous precedent, and by continuing its preventive strike policy it continues to provide other states with the justification to do the same.**

Self-defense regime collapse causes every hot spot to escalate

William Bradford, Assistant Professor of Law, Indiana University School of Law, July 2004, SYMPOSIUM: THE CHANGING LAWS OF WAR: DO WE NEED A NEW LEGAL REGIME AFTER SEPTEMBER 11?: "THE DUTY TO DEFEND THEM": n1 A NATURAL LAW JUSTIFICATION FOR THE BUSH DOCTRINE OF PREVENTIVE WAR, 79 Notre Dame L. Rev. 1365

For restrictivists, n67 anticipatory self-defense, despite its pedigree, is "fertile ground for torturing the self-defense concept" n68 and a dangerous warrant for manipulative, self-serving states to engage in prima facie illegal aggression while cloaking their actions under the guise of anticipatory self-defense and claiming legal legitimacy. n69 Analysis of the legitimacy of an act of anticipatory self-defense requires replacing the objectively verifiable prerequisite of an "armed attack" under Article 51 with the subjective perception of a "threat" of such an attack as perceived by the state believing itself a target, and thus determination of whether a state has demonstrated imminence before engaging in anticipatory self-defense lends itself to post hoc judgments of an infinite number of potential scenarios, spanning a continuum from the most innocuous of putatively civilian acts, including building roads and performing scientific research, to the most threatening, including the overt marshaling of thousands of combat troops in offensive dispositions along a contested border. Establishing the necessity of anticipatory self-defense in response to a pattern of isolated incidents over a period of time is an equally subjective task susceptible to multiple determinations and without empirical standards to guide judgment. n70 History is replete with examples of aggression masquerading as anticipatory self-defense, n71 including the Japanese invasion of Manchuria in [\*1385] 1931 n72 and the German invasion of Poland in 1939, n73 and by simply recharacterizing their actions as anticipatory self-defense rather than aggression dedicated to territorial revanchism or fulfillment of religious obligations, **self-interested states such as China, North Korea, Pakistan, or members of the Arab League,** restrictivists warn, **might claim the legal entitlement to attack**, respectively, **Taiwan, South Korea, India, and Israel**. n74 Moreover, taken to its logical extreme the doctrine of anticipatory self-defense might be interpreted as authorizing a state under the leadership of a paranoid decisionmaker to attack the entire world on the false suspicion of threats emanating from every corner. n75

**A strong, adaptive LOAC regime is key to regulate inevitable autonomous weapons – the impact is global war**

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Since the first lethal drone strike in 2001, the US use of remotely operated robotic weapons has dramatically expanded. Along with the broader use of robots for surveillance, ordnance disposal, logistics, and other military tasks, robotic weapons have spread rapidly to many nations, captured public attention, and sparked protest and debate. Meanwhile, every dimension of the technology is being vigorously explored. From stealthy, unmanned jets like the X-47B and its Chinese and European counterparts, to intelligent missiles, sub-hunting robot ships, and machine gun-wielding micro-tanks, robotics is now the most dynamic and destabilizing component of the global arms race.

Drones and robots are enabled by embedded autonomous subsystems that keep engines in tune and antennas pointed at satellites, and some can navigate, walk, and maneuver in complex environments autonomously. But with few exceptions, the targeting and firing decisions of armed robotic systems remain tightly under the control of human operators. This may soon change.

Autonomous weapons are robotic systems that, once activated, can select and engage targets without further intervention by a human operator (Defense Department, 2012). Examples include drones or missiles that hunt for their targets, using their onboard sensors and computers. Based on a computer’s decision that an appropriate target has been located, that target will then be engaged. Sentry systems may have the capability to detect intruders, order them to halt, and fire if the order is not followed. Future robot soldiers may patrol occupied cities. Swarms of autonomous weapons may enable a preemptive attack on an adversary’s strategic forces. Autonomous weapons may fight each other.

Just as the emergence of low-cost, high-performance information technology has been the most important driver of technological advance over the past half-century—including the revolution in military affairs already seen in the 1980s and displayed to the world during the 1991 Gulf War—so the emergence of artificial intelligence and autonomous robotics will likely be the most important development in both civilian and military technology to unfold over the next few decades.

Proponents of autonomous weapons argue that technology will gradually take over combat decision making: “Detecting, analyzing and firing on targets will become increasingly automated, and the contexts of when such force is used will expand. As the machines become increasingly adept, the role of humans will gradually shift from full command, to partial command, to oversight and so on” (Anderson and Waxman, 2013). Automated systems are already used to plan campaigns and logistics, and to assemble intelligence and disseminate lethal commands; in some cases, humans march to orders generated by machines. If, in the future, machines are to act with superhuman speed and perhaps even superhuman intelligence, how can humans remain in control? As former Army Lt. Colonel T. K. Adams observed more than a decade ago (2001), “Humans may retain symbolic authority, but automated systems move too fast, and the factors involved are too complex for real human comprehension.”

Almost nobody favors a future in which humans have lost control over war machines. But proponents of autonomous weapons argue that effective arms control would be unattainable. Many of the same claims that propelled the Cold War are being recycled to argue that autonomous weapons are inevitable, that international law will remain weak, and that there is no point in seeking restraint since adversaries will not agree—or would cheat on agreements. This is the ideology of any arms race.

Is autonomous warfare inevitable?

Challenging the assumption of the inevitability of autonomous weapons and building on the work of earlier activists, the Campaign to Stop Killer Robots, a coalition of nongovernmental organizations, was launched in April 2013. This effort has made remarkable progress in its first year. In May, the United Nations Special Rapporteur on extrajudicial killings, Christof Heyns, recommended that nations immediately declare moratoriums on their own development of lethal autonomous robotics (Heyns, 2013). Heyns also called for a high-level study of the issue, a recommendation seconded in July by the UN Advisory Board on Disarmament Matters. At the UN General Assembly’s First Committee meeting in October, a flood of countries began to express interest or concern, including China, Russia, Japan, the United Kingdom, and the United States. France called for a mandate to discuss the issue under the Convention on Certain Conventional Weapons, a global treaty that restricts excessively injurious or indiscriminate weapons. Meeting in Geneva in November, the state parties to the Convention agreed to formal discussions on autonomous weapons, with a first round in May 2014. The issue has been placed firmly on the global public and diplomatic agenda.

Despite this impressive record of progress on an issue that was until recently virtually unknown—or scorned as a mixture of science fiction and paranoia—there seems little chance that a strong arms control regime banning autonomous weapons will soon emerge from Geneva. Unlike glass shrapnel, blinding lasers, or even landmines and cluster munitions, autonomous weapon systems are not niche armaments of negligible strategic importance and unarguable cost to humanity. Instead of the haunting eyes of children with missing limbs, autonomous weapons present an abstract, unrealized horror, one that some might hope will simply go away.

Unless there is a strong push from civil society and from governments that have decided against pursuing autonomous weapons, those that have decided in favor of them—including the United States (Gubrud, 2013)—will seek to manage the issue as a public relations problem. They will likely offer assurances that humans will remain in control, while continually updating what they mean by control as technology advances. Proponents already argue that humans are never really out of the loop because humans will have programmed a robot and set the parameters of its mission (Schmitt and Thurnher, 2013). But autonomy removes humans from decision making, and even the assumption that autonomous weapons will be programmed by humans is ultimately in doubt.

Diplomats and public spokesmen may speak in one voice; warriors, engineers, and their creations will speak in another. The development and acquisition of autonomous weapons will push ahead if there is no well-defined, immovable, no-go red line. The clearest and most natural place to draw that line is at the point when a machine pulls the trigger, making the decision on whether, when, and against whom or what to use violent force. Invoking a well-established tenet of international humanitarian law, opponents can argue that this is already contrary to principles of humanity, and thus inherently unlawful. Equally important, opponents must point out the threat to peace and security posed by the prospect of a global arms race toward robotic arsenals that are increasingly out of human control.

Humanitarian law vs. killer robots

The public discussion launched by the Campaign to Stop Killer Robots has mostly centered on questions of legality under international humanitarian law, also called the law of war. “Losing Humanity,” a report released by Human Rights Watch in November 2012—coincidentally just days before the Pentagon made public the world’s first open policy directive for developing, acquiring, and using autonomous weapons—laid out arguments that fully autonomous weapons could not satisfy basic requirements of the law, largely on the basis of assumed limitations of artificial intelligence (Human Rights Watch and International Human Rights Clinic at Harvard Law School, 2012).

The principle of distinction, as enshrined in Additional Protocol I of the Geneva Conventions—and viewed as customary international law, thus binding even on states that have not ratified the treaty—demands that parties to a conflict distinguish between civilians and combatants, and between civilian objects and military objectives. Attacks must be directed against combatants and military objectives only; weapons not capable of being so directed are considered to be indiscriminate and therefore prohibited. Furthermore, those who make attack decisions must not allow attacks that may be expected to cause excessive harm to civilians, in comparison with the military gains expected from the attack. This is known as the principle of proportionality.

“Losing Humanity” argues that technical limitations mean robots could not reliably distinguish civilians from combatants, particularly in irregular warfare, and could not fulfill the requirement to judge proportionality.1 Distinction is clearly a challenge for current technology; face-recognition technology can rapidly identify individuals from a limited list of potential targets, but more general classification of persons as combatants or noncombatants based on observation is well beyond the state of the art. How long this may remain so is less clear. The capabilities to be expected of artificial intelligence systems 10, 20, or 40 years from now are unknown and highly controversial within both expert and lay communities.

While it may not satisfy the reified principle of distinction, proponents of autonomous weapons argue that some capability for discrimination is better than none at all. This assumes that an indiscriminate weapon would be used if a less indiscriminate one were not available; for example, it is often argued that drone strikes are better than carpet bombing. Yet at some point autonomous discrimination capabilities may be good enough to persuade many people that their use in weapons is a net benefit.

Judgment of proportionality seems at first an even greater challenge, and some argue that it is beyond technology in principle (Asaro, 2012). However, the military already uses an algorithmic “collateral damage estimation methodology” (Defense Department, 2009) to estimate incidental harm to civilians that may be expected from missile and drone strikes. A similar scheme could be developed to formalize the value of military gains expected from attacks, allowing two numbers to be compared. Human commanders applying such protocols could defend their decisions, if later questioned, by citing such calculations. But the cost of this would be to degrade human judgment almost to the level of machines.

On the other hand, IBM’s Watson computer (Ferruci et al., 2010) has demonstrated the ability to sift through millions of pages of natural language and weigh hundreds of hypotheses to answer ambiguous questions. While some of Watson’s responses suggest it is not yet a trustworthy model, it seems likely that similar systems, given semantic information about combat situations, including uncertainties, might be capable of making military decisions that most people would judge as reasonable, most of the time.

“Losing Humanity” also argues that robots, necessarily lacking emotion,2 would be unable to empathize and thus unable to accurately interpret human behavior or be affected by compassion. An important case of the latter is when soldiers refuse orders to put down rebellions. Robots would be ideal tools of repression and dictatorship.

If robot soldiers become available on the world market, it is likely that repressive regimes will acquire them, either by purchase or indigenous production. While it is theoretically possible for such systems to be safeguarded with tamper-proof programming against human rights abuses, in the event that the world fails to prohibit robot soldiers, unsafeguarded or poorly safeguarded versions will likely be available. A strong prohibition has the best chance of keeping killer robots out of the hands of dictators, both by restricting their availability and stigmatizing their use.

Accountability is another much-discussed issue. Clearly, a robot cannot be held responsible for its actions, but human commanders and operators—or even manufacturers, programmers, and engineers—might be held responsible for negligence or malfeasance. In practice, however, the robot is likely to be a convenient scapegoat in case of an unintended atrocity—a technical failure occurred, it was unintended and unforeseen, so nobody is to blame. Going further, David Akerson (2013) argues that since a robot cannot be punished, it cannot be a legal combatant.

These are some of the issues most likely to be discussed within the Convention on Certain Conventional Weapons. However, US Defense Department policy (2012) preemptively addresses many of these issues by directing that “[a]utonomous and semi-autonomous weapon systems shall be designed to allow commanders and operators to exercise appropriate levels of human judgment over the use of force.”

Under the US policy, commanders and operators are responsible for using autonomous weapons in accordance with the laws of war and relevant treaties, safety rules, and rules of engagement. For example, an autonomous weapon may be sent on a hunt-and-kill mission if tactics, techniques, and procedures ensure that the area in which it is directed to search contains no objects, other than the intended targets, that the weapon might decide to attack. In this case, the policy regards the targets as having been selected by humans and the weapon as merely semi-autonomous, even if the weapon is operating fully autonomously when it decides that a given radar return or warm object is its intended target. The policy pre-approves the immediate development, acquisition, and use of such weapons.

Although the policy does not define “appropriate levels,” it applies this rubric even in the case of fully autonomous lethal weapons targeting human beings without immediate human supervision. This makes it clear that appropriate levels, as understood within the policy, do not necessarily require direct human involvement in the decision to kill a human being (Gubrud, 2013). It seems likely that the United States will press other states to accept this paradigm as the basis for international regulation of autonomous weapons, leaving it to individual states to determine what levels of human judgment are appropriate.

Demanding human control and responsibility

As diplomatic discussions about killer robot regulation get under way, a good deal of time is apt to be lost in confusion about terms, definitions, and scope. “Losing Humanity” seeks to ban “fully autonomous weapons,” and Heyns’s report used the term “lethal autonomous robotics.” The US policy directive speaks of “autonomous and semi-autonomous weapon systems,” and the distinction between these is ambiguous (Gubrud, 2013). The Geneva mandate is to discuss “lethal autonomous weapon systems.”

Substantive questions include whether non-lethal weapons and those that target only matériel are within the scope of discussion. Legacy weapons such as simple mines may be regarded as autonomous, or distinguished as merely automatic, on grounds that their behavior is fully predictable by designers.3 Human-supervised autonomous and semi-autonomous weapon systems, as defined by the United States, raise issues that, like fractal shapes, appear more complex the more closely they are examined.

Instead of arguing about how to define what weapons should be banned, it may be better to agree on basic principles. One is that any use of violent force, lethal or non-lethal, must be by human decision and must at all times be under human control. Implementing this principle as strictly as possible implies that the command to engage an individual target (person or object) must be given by a human being, and only after the target is being reliably tracked by a targeting system and a human has determined that it is an appropriate and legal target.

A second principle is that a human commander must be responsible and accountable for the decision, and if the commander acts through another person who operates a weapon system, that person must be responsible and accountable for maintaining control of the system. “Responsible” refers here to a moral and legal obligation, and “accountable” refers to a formal system for accounting of actions. Both elements are essential to the approach.

Responsibility implies that commanders and operators may not blame inadequacies of technological systems for any failure to exercise judgment and control over the use of violent force. A commander must ensure compliance with the law and rules of engagement independently of any machine decision, either as to the identity of a target or the appropriateness of an attack, or else must not authorize the attack. Similarly, if a system does not give an operator sufficient control over the weapon to prevent unintended engagements, the operator must refuse to operate the system.

Accountability can be demonstrated by states that comply with this principle. They need only maintain records showing that each engagement was properly authorized and executed. If a violation is alleged, selected records can be unsealed in a closed inquiry conducted by an international body (Gubrud and Altmann, 2013).4

This framing, which focuses on human control and responsibility for the decision to use violent force, is both conceptually simple and morally compelling. What remains then is to set standards for adequate information to be presented to commanders, and to require positive action by operators of a weapon system. Those standards should also address any circumstances under which other parties—designers and manufacturers, for instance—might be held responsible for an unintended engagement.

There is at least one exceptional circumstance in which human control may be applied less strictly. Fully autonomous systems are already used to engage incoming missiles and artillery rounds; examples include the Israeli Iron Dome and the US Patriot and Aegis missile defense systems, as well as the Counter Rocket, Artillery, and Mortar system. The timeline for response in such systems is often so short that the requirement for positive human decision might impose an unacceptable risk of failure. Another principle—the protection of life from immediate threats—comes into play here. An allowance seems reasonable, if it is strictly limited. In particular, autonomous return fire should not be permitted, but only engagement of unmanned munitions directed against human-occupied territory or vehicles. Each such system should have an accountable human operator, and autonomous response should be delayed as long as possible to allow time for an override decision.

The strategic need for robot arms control

Principles of humanity may be the strongest foundation for an effective ban of autonomous weapons, but they are not necessarily the most compelling reason why a ban must be sought. The perceived military advantages of autonomy are so great that major powers are likely to strongly resist prohibition, but by the same token, autonomous weapons pose a severe threat to global peace and security.

Although humans have (for now) superior capabilities for perception in complex environments and for interpretation of ambiguous information, machines have the edge in speed and precision. If allowed to return fire or initiate it, they would undoubtedly prevail over humans in many combat situations. Humans have a limited tolerance of the physical extremes of acceleration, temperature, and radiation, are vulnerable to biological and chemical weapons, and require rest, food, breathable air, and drinkable water. Machines are expendable; their loss does not cause emotional pain or political backlash. Humans are expensive, and their replacement by robots is expected to yield cost savings.

While today’s relatively sparse use of drones, in undefended airspace, to target irregular forces can be carried out by remote control, large-scale use of robotic weapons to attack modern military forces would require greater autonomy, due to the burdens and vulnerabilities of communications links, the need for stealth, and the sheer numbers of robots likely to be involved. The US Navy is particularly interested in autonomy for undersea systems, where communications are especially problematic. Civilians are sparse on the high seas and absent on submarines, casting doubt on the relevance of humanitarian law. As the Navy contemplates future conflict with a peer competitor, it projects drone-versus-drone warfare in the skies above and waters below, and the use of sea-based drones to attack targets inland as well.

In a cold war, small robots could be used for covert infiltration, surveillance, sabotage, or assassination. In an open attack, they could find ways of getting into underground bunkers or attacking bases and ships in swarms. Because robots can be sent on one-way missions, they are potential enablers of aggression or preemption. Because they can be more precise and less destructive than nuclear weapons, they may be more likely to be used. In fact, the US Air Force’s Long Range Strike Bomber is planned to be both nuclear-capable and potentially unmanned, which would almost certainly mean autonomous.

There can be no real game-changers in the nuclear stalemate. Yet the new wave of robotics and artificial intelligence-enabled systems threatens to drive a new strategic competition between the United States and other major powers—and lesser powers, too. Unlike the specialized technologies of high-performance military systems at the end of the Cold War, robotics, information technology, and even advanced sensors are today globally available, driven as much by civilian as military uses. An autonomous weapons arms race would be global in scope, as the drone race already is.

Since robots are regarded as expendable, they may be risked in provocative adventures. Recently, China has warned that if Japan makes good on threats to shoot down Chinese drones that approach disputed islands, it could be regarded as an act of war. Similarly, forward-basing of missile interceptors (Lewis and Postol, 2010) or other strategic weapons on unmanned platforms would risk misinterpretation as a signal of imminent attack, and could invite preemption.

Engineering the stability of a robot confrontation would be a wickedly hard problem even for a single team working together in trust and cooperation, let alone hostile teams of competing and imperfectly coordinated sub-teams. Complex, interacting systems-of-systems are prone to sudden unexpected behavior and breakdowns, such as the May 6, 2010 stock market crash caused by interacting exchanges with slightly different rules (Nanex, 2010). Even assuming that limiting escalation would be a design objective, avoiding defeat by preemption would be an imperative, and this implies a constant tuning to the edge of instability. The history of the Cold War contains many well-known examples in which military response was interrupted by the judgment of human beings. But when tactical decisions are made with inhuman speed, the potential for events to spiral out of control is obvious.

The way out

Given the military significance of autonomous weapons, substantial pressure from civil society will be needed before the major powers will seriously consider accepting hard limits, let alone prohibition. The goal is as radical as, and no less necessary than, the control and abolition of nuclear weapons.

The principle of humanity is an old concept in the law of war. It is often cited as forbidding the infliction of needless suffering, but at its deepest level it is a demand that even in conflict, people should not lose sight of their shared humanity. There is something inhumane about allowing technology to decide the fate of human lives, whether through individual targeting decisions or through a conflagration initiated by the unexpected interactions of machines. The recognition of this is already deeply rooted. A scientific poll (Carpenter, 2013) found that Americans opposed to autonomous weapons outnumbered supporters two to one, in contrast to an equally strong consensus in the United States supporting the use of drones. The rest of the world leans heavily against the drone strikes (Pew Research Center, 2012), making it seem likely that global public opinion will be strongly against autonomous weapons, both on humanitarian grounds and out of concern for the dangers of a new arms race.

In the diplomatic discussions now under way, opponents of autonomous weapons should emphasize a well-established principle of international humanitarian law. Seeking to resolve a diplomatic impasse at the Hague Conference in 1899, Russian diplomat Friedrich Martens proposed that for issues not yet formally resolved, conduct in war was still subject to “principles of international law derived from established custom, from the principles of humanity, and from the dictates of public conscience.” Known as the Martens Clause, it reappeared in the second Hague Convention (1907), the Tehran Conference on Human Rights (1968), and the Geneva Convention additional protocols (1977). It has been invoked as the source of authority for retroactive liability in war crimes and for preemptive bans on inhumane weapons, implying that a strong public consensus has legal force in anticipation of an explicit law (Meron, 2000).

Autonomous weapons are a threat to global peace and therefore a matter of concern under the UN Charter. They are contrary to established custom, principles of humanity, and dictates of public conscience, and so should be considered as preemptively banned by the Martens Clause. These considerations establish the legal basis for formal international action to prohibit machine decision in the use of force. But for such action to occur, global civil society will need to present major-power governments with an irresistible demand: Stop killer robots.

Iran follows US self-defense precedent --- they’ll strike Pakistan

Fisk & Ramos 13 (Kerstin Fisk --- PhD in Political Science focusing on interstate war @ Claremont Graduate University, Jennifer M. Ramos PhD in Polisci and Professor @ Loyola Marymount focusing on norms and foreign policy, including drone warfare and preventative use of force, “Actions Speak Louder Than Words: Preventive Self-Defense as a Cascading Norm” 15 APR 2013, International Studies Perspectives (2013), 1–23)

Having outlined the emergence of the United States as a norm entrepreneur, we now turn to our examination of our diffusion argument. To investigate the diffusion of the preventive use of force strategy, we analyze the cases of India, Russia, Germany, and China for several reasons. First, they are states that would have the capabilities to back up their verbal adherence to the strategy. Second, all of these countries initially condemned the US-led war in Iraq. In terms of norm diffusion, they provide a range of countries that are not especially inclined to follow the United States’ lead in national security policy. They therefore provide some of the least-likely cases in determining whether the norm of preventive self-defense is diffusing as a national defense strategy.

As above, in each of these cases, we rely on media reports within each country and relevant literature since 2001 to determine whether the norm of preventive self-defense has diffused to these countries. Within the cases, we are especially focused on elite attitudes and military doctrine just prior to the US invasion of Iraq (2003), which serves as a marker for the promotion of the norm of preventive self-defense, and the evolution (or not) of state positions thereafter. To be clear, we are interested in the diffusion of the strategy of preventive self-defense as it appears in a variety of contexts, from targeted killing to full-scale war. While clearly different in scale, these actions, as demonstrated in the cases that follow, share an underlying principle strategy of preventive self-defense. If this norm is truly diffusing, we should see evidence of this in national security policy targeted at both state and nonstate actors; that is, any actor that poses a threat to the security of a state. Again, we are interested in ascertaining the degree to which norm diffusion is occurring.

India

Prior to 2004, the Indian military's posture was one of “dissuasive deterrence” (Ahmed 2009a). The military was fundamentally defensive in its orientation, its doctrine characterized by strategic restraint and grounded in the country's political history (Dasgupta and Cohen 2011). Mahatma Gandhi and Jawaharlal Nehru, India's “founding fathers,” had the greatest influence on the character of post-independence India and “saw the use of armed force as normatively flawed and practically costly for India” (Dasgupta and Cohen 2011:163). Beyond the ideological influence of Gandhi and Nehru, India's doctrine of strategic restraint was a result of its views that the international realm is generally benign and that development should be privileged over defense (Cohen and Dasgupta 2010:xii). In addition, India had a record of championing multilateral international action through the United Nations as the means of addressing perceived global security challenges. Its “non-aggressive, non-provocative defense policy based on the philosophy of defensive defense” (Fernandes 2000:160) and, in the 1980s, “deterrence by punishment” (Ahmed 2009a:703) characterized the country's military and strategic doctrine for several decades post-independence.

Not surprisingly, then, the Indian government was officially opposed to and publically critical of the US-led invasion of Iraq in 2003.22 Prior to the war, India repeatedly expressed its desire for any decision on Iraq to be carried out by the United Nations. Deputy Prime Minister LK Advani took a strong stand against the unilateral use of force, stating that “If there is any failure on Iraq's part to comply with the UN Resolutions or if there is any shortcoming, whatever decision needs to be taken should be [sic] by the UN.”23 On the day of the invasion, March 20, 2003, a spokesman for the Foreign Ministry issued the following statement:

 It is with the deepest anguish that we have seen reports of the commencement of military action in Iraq. It is a matter of grave concern that continuing differences within the Security Council prevented a harmonization of the positions of members, resulting in seriously impairing the authority of the UN system. The military action begun today thus lacks justification.24

In the days immediately following the invasion, the war was denounced by a leading Indian political analyst in a major newspaper as “the new face of colonialism, ruthless, aggressive, and inhuman.”25 Parliament's speaker declared, “Expressing national sentiment, this house condemns the war in Iraq by the US-led coalition.”26 Within the first few days of the war, the parliament went so far as to unanimously pass a resolution affirming that India would endorse military initiatives only under the auspices of the United Nations. Russian and Indian foreign ministers expressed “profound concern” over the “bypassing the UN Security Council” and issued a joint statement which read, “The international community cannot allow this. Russia and India want the regulation of the Iraqi problem brought back to the Security Council and they strongly call for this.”27

However, the Indian position on the Bush Doctrine is not so clear-cut. As early as 2002, there were signs from Indian officials that Bush's preventive language was being considered in the context of the India–Pakistan rivalry. Finance Minister Jaswant Singh, while on a trip to Washington in 2002, claimed states’ rights to preemption and prevention, asserting:

 Preemption or prevention is inherent in deterrence. Where there is deterrence there is preemption. The same thing is there in Article 51 of the United Nations Charter. Every nation has that right. It is not the prerogative of any one country. Preemption is the right of any nation to prevent injury to itself. 28

Minister Singh, a personal friend of then Prime Minister Atal Bihari Vajpayee, added that any debate about the issue was limited to “complex” academics. By early April 2003, the majority leadership of the governing coalition was indeed backtracking on its original position against the unilateral actions by the United States in Iraq. Foreign Minister Yashwant Sinha declared in an interview that what the United States had done in Iraq, India could do in Pakistan. He stated, “We derive some satisfaction because I think all those people in **the international community must realize that India has a much better case to go for preemptive action against Pakistan** than the US has in Iraq.”29 When met with criticism from some parliamentarians in the governing coalition who accused Sinha of justifying the Iraq war, Sinha replied:

 We know from experience, we know on the basis of evidence, that Pakistan does not fall in the same category as Iraq. It is in a much worse category. And therefore, it was in that context, that this reply was given by me that if these are the criteria, then Pakistan is a fitter case.30

US State Department spokeswoman Joanne Prokopowicz issued a statement soon after: “Any attempts to draw parallels between the Iraq and Kashmir situations are wrong and are overwhelmed by the differences between them.” She added that US actions in Iraq should not be taken as precedent.29 The overture did not have much effect. In the days that followed, India's ruling BJP party purposefully toned down the rhetoric on Iraq so that instead of “condemning” the war in its official statement, it was less forcefully “deploring” it.31 **Within a year, India altered its military doctrine**.

The change in doctrine purportedly was a response to India's failure in Operation Parakram (Operation Victory) in 2001 and early 2002. Operation Parakram was devised in December 2001, following an attack on Indian parliament by a group of gunman. India's government alleged (and reports largely confirmed) that the attackers were Pakistan-sponsored Kashmiri militants (Ladwig 2008:160–161). India's attempt to mobilize for war to signal resolve through Operation Parakram was so slow, however, that Pakistan had time to mobilize and reach the shared border ahead of Indian forces. As a result, Ladwig argues, India's defense establishment realized that the so-called doctrine of restraint “…was too crude and inflexible a tool to respond to terrorist attacks and other indirect challenges” and “mobilizing the entire military was not an appropriate policy to pursue limited aims” (162–163). India therefore devised a new war fighting doctrine reorienting the military toward a posture of “proactive deterrence” with “offensive bias” (Ahmed 2009a:701).

The Cold Start doctrine, which permits the Indian military to attack before it mobilizes, was not announced until April 2004. Thus, despite the rude awakening it received in 2001, India did not publicize its turn toward offense until after the US invaded Iraq in 2003. Furthermore, India's new doctrine of swift mobilization and surgical strikes embodies the principles of the second Iraq war. A turn toward preventive self-defense, the new approach emphasizes the ability to quickly deploy and operate forces. In 2008, India began aggressively seeking armed unmanned aerial vehicles. In January 2011, The Times of India reported that “Modernization of the special forces of Army, Navy and IAF, trained to undertake covert missions deep behind enemy lines and hit high value targets with precision, is now finally gathering steam.”32

India's drones were used for surveillance and reconnaissance purposes until the 2008 terrorist attack by Pakistanis in Mumbai (11/26), after which **there were calls to conduct surgical strikes** on terror camps, particularly the Lashkar-e-Taiba headquarters, **in Pakistan and** Pakistan-occupied **Kashmir**. At this time, defense officials began to more assertively seek out armed “killer” drones.33 India has since acquired armed Israeli-made Harpy UAVs as well as more advanced Heron drones.34 It is seeking out micro- and mini-UAVs, which “being stealthy because of their small size…will be used to equip Army's Para (Special Forces) battalions for covert missions beyond enemy lines, counter-terrorism operations and beyond the hill surveillance.”35 The Indian Air Force (IAF) seems to be drawing lessons from US UCAV (unmanned combat aerial vehicle) programs, as India is “quietly” developing a drone of its own, which it likens to the American Predator.36 According to an official at the Indian Defense Research & Development Organization, “The way the Americans converted a robust surveillance drone into a combat drone is something we are confident we can replicate.”37

While the development of Indian UCAVs may be quiet, the rhetoric from India's political and military leaders concerning the use of UAVs and UCAVs in Pakistan is decidedly less so. On May 4, 2011, when asked why India couldn't carry out an Abbottabad-like operation against terrorists, Army General VK Singh indicated that India's armed forces could indeed carry out an operation similar to the one the US undertook to find and kill bin Laden without Pakistan's knowledge or approval. Singh remarked, “I would like to say only this that if such a chance comes, then all the three arms (of the military) are competent to do this.”38 He also stated, “We can't deny the presence of dreaded terrorists in the region. All of them have to be eliminated.”39 A few days later, the former Minister for External Affairs and current senior leader of India's Bharatiya Janata Party (BJP) told a news agency:

 This distinction between 11/9 and 11/26 is unacceptable to us as Indian lives are as precious as US lives. India has been at the receiving end of terrorism for over two decades. India cannot be denied the rights that the US has, including that of surgical strikes….India should reserve the right of surgical strikes and hot pursuit against Pakistan irrespective of the consequences. As and when considered necessary, India should not hesitate to carry out such an attack….India has always been considered a soft state and it is time we shed this image….Sovereignty of Pakistan has long been in tatters. US has been striking at terrorists and terror bases in Pakistan through drone attacks. Even today, 10 terrorists have been killed in drone attacks.40

Clearly, **India's investment in drone technology and use of such language demonstrates its commitment to preventive self-defense, a far cry from its previous reliance on strategic restraint**. Thus, **India serves as a confirmatory case of the diffusion of the norm** set by the Bush administration with the invasion of Iraq.

Causes Pakistan retaliation that escalates

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India will soon be equipping its drones with precision-guided munitions (PGMs), according to the head of the country’s defense technology agency.

According to The Hindu, on Monday Avinash Chander, the new Director-General of India’s Defense Research and Development Organization (DRDO) said that “in a couple of months” his organization would begin testing PGMs that are small enough to fit onto Unmanned Aerial Vehicles (UAVs).

The newspaper paraphrased Chander as saying that along with miniaturization, the “major thrust” of DRDO’s effort in the short term are on “bridging vital gaps in developing advanced seekers, sensors and actuators.” In the future, Chander said his agency would focus on the “development of navigation and telemetry on chip and that of loitering weapons with 80 percent explosives and 20 percent avionics.”

Speaking at the same conference as Chander, G. Satheesh Reddy, the head of Research Centre Imarat (RCI)—a missile research laboratory that is helping to develop India’s PGMs—said his company was working on extending the range of the PGMs to 100 km, up from 30 km currently.

Since taking over DRDO in June, Chander has said that developing more advanced UAV technology will be a top priority for the defense technology agency under his management.

India is already in the drone business, and demand for UAVs from the defense and civilian sectors is expected to increase drastically in the years ahead. Currently, annual UAV sales in India stand at about US$5.2 billion; this figure will increase to US$11.6 billion over the next decade, according to the Teal Group Corporation, a U.S. aerospace consultancy firm.

A Teal Group executive told The Times of India last month that they expect India’s demand to be “50 medium-altitude, long-endurance (MALE) UAVs, 60 Navy UAVs, 70 Air Force tactical UAVs, 100 Army tactical UAVs and 980 mini-UAVs over the next decade."

India’s precision-guided technology is currently far more underdeveloped, but Delhi is hoping to change this in the coming years through indigenous development or imports. According to India Military Review, India’s precision attack and targeting capabilities are currently limited to laser-guided bomb (LGB) kits attached to dumb bombs.” The same source, however, forecasts that precision bombs and missiles will become much more common among Indian Naval and Air systems over the next five to ten years.

Indian defense experts The Diplomat spoke with were therefore skeptical that India’s drones will be equipped with miniaturized smart bombs any time in the immediate future.

Bharat Karnad, a Senior Fellow in National Security Studies at the Center for Policy Research in Delhi, acknowledged that “DRDO is working on a project to develop a sufficiently compact PGM to arm a drone” but said that “such a capability is immanent, not imminent.”

Yogesh Joshi, an expert on India’s strategic and missile capabilities at the School of International Studies at Jawaharlal Nehru University in Delhi, was slightly more optimistic.

“It will take them a lot of time to get where U.S. and Israel are,” Joshi told The Diplomat referring to DRDO. “However, DRDO is also benefiting a lot by collaboration with U.S. and particularly Israel. Given the fact [that the] U.S. is not as critical of India-Israel engagement as it used to be has benefited this relationship. So the progress may be much more speedy than we expect.”

Both experts also agreed that having such a capability would be useful to Delhi in a number of important areas.

Karnad, who helped draft India’s nuclear doctrine in the late 1990s, said that there is a “whole bunch of tactical and strategic military uses,” for drones armed with smart bombs, including “on the conventional military battlefield versus Pakistan and China, for deployment against terrorist training camps and staging areas/supply depots in Pakistan-occupied Kashmir, and to fight the Naxal insurgents active inside the country.”

Joshi had a similar assessment saying that the drones could be “used for fighting terrorism inside the country in remote areas of Jammu and Kashmir as well as anti-Naxal operations.”

He didn’t believe that the drones would be used to target anti-India militants inside Pakistan proper in the same way that the U.S. has used its drone fleet to carry out targeted strikes against al-Qaeda and Taliban fighters operating in Pakistan’s northwestern regions.

“I think **it will be foolish to use them against militants on foreign soil,” Joshi said when asked** by The Diplomat **if the drones would be used inside Pakistan**.

He pointed out that **Pakistan has** repeatedly said **it has the capability to shoot down U.S. drones**, and Iran has in fact taken down a U.S. drone that was conducting surveillance operations in Iranian airspace.

“For all obvious reasons, Pakistan certainly can't shoot down U.S. drones. But in the case of India, it will not restrain itself at all. We would therefore be staring at… a loss of resources, international embarrassment as well as an escalation of conflict.”

Nuclear war

Sharma 12

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The Indo-Pak nuclear rivalry, for all intents and purposes, is an extension of the age-old Indo-Pak political rivalry, though it does add a new and more ominous dimension.38 Today, this enduring rivalry has put India and Pakistan on the verge of conventional, and possibly nuclear, war. However, crossing the nuclear Rubicon is such a dreaded decision that even the mightiest ruler in the world would think twice about using these weapons. So, a nuclear attack by a Pakistani government seems improbable unless Pakistan falls under the control of a radical Islamist group. The consequences of a Pakistani nuclear attack on India would be nuclear retaliation, which would be disastrous for Pakistan. The risk of conventional war between India and Pakistan is more likely than a nuclear one, undermining nuclear deterrence theory. The immediate cause of war between India and Pakistan is more likely to be competition between India and Pakistan for influence in Afghanistan once the U.S.-led forces leave the country, or a military takeover of Pakistan and a subsequent attack on India. In either case, there is a possibility that Indian retaliation would be under its new CSD and would not cross the nuclear threshold. But, as discussed, the risk of nuclear conflict cannot be ruled out, and the chance of involvement by external powers, such as China and the United States, cannot be denied.

## solvency

Only restricting self-defense prevents collapse of norms

Beau Barnes, J.D., Boston University School of Law, Spring 2012, REAUTHORIZING THE “WAR ON TERROR”: THE LEGAL AND POLICY IMPLICATIONS OF THE AUMF’S COMING OBSOLESCENCE, https://www.jagcnet.army.mil/DOCLIBS/MILITARYLAWREVIEW.NSF/20a66345129fe3d885256e5b00571830/b7396120928e9d5e85257a700042abb5/$FILE/By%20Beau%20D.%20Barnes.pdf

Therefore, the more likely result is that the Executive Branch, grappling with the absence of explicit legal authority for a critical policy, would need to make increasingly strained legal arguments to support its actions.121 Thus, the Obama Administration will soon be forced to rationalize ongoing operations under existing legal authorities, which, I argue below, will have significant harmful consequences for the United States. Indeed, the administration faces a Catch-22—its efforts to destroy Al Qaeda as a functioning organization will lead directly to the vitiation of the AUMF. The administration is “starting with a result and finding the legal and policy justifications for it,” which often leads to poor policy formulation.122 Potential legal rationales would perforce rest on exceedingly strained legal arguments based on the AUMF itself, the President’s Commander in Chief powers, or the international law of selfdefense.123 Besides the inherent damage to U.S. credibility attendant to unconvincing legal rationales, each alternative option would prove legally fragile, destabilizing to the international political order, or both.

1. Effect on Domestic Law and Policy

Congress’s failure to reauthorize military force would lead to bad domestic law and even worse national security policy. First, a legal rationale based on the AUMF itself will increasingly be difficult to sustain. Fewer and fewer terrorists will have any plausible connection to the September 11 attacks or Al Qaeda, and arguments for finding those connections are already logically attenuated. The definition of those individuals who may lawfully be targeted and detained could be expanded incrementally from the current definition, defining more and more groups as Al Qaeda’s “co-belligerents” and “associated forces.”124 But this approach, apart from its obvious logical weakness, would likely be rejected by the courts at some point.125 The policy of the United States should not be to continue to rely on the September 18, 2001, AUMF.

Second, basing U.S. counterterrorism efforts on the President’s constitutional authority as Commander in Chief is legally unstable, and therefore unsound national security policy, because a combination of legal difficulties and political considerations make it unlikely that such a rationale could be sustained. This type of strategy would likely run afoul of the courts and risk destabilizing judicial intervention,126 because the Supreme Court has shown a willingness to step in and assert a more proactive role to strike down excessive claims of presidential authority.127 Politically, using an overly robust theory of the Commander in Chief’s powers to justify counterterrorism efforts would, ultimately, be difficult to sustain. President Obama, who ran for office in large part on the promise of repudiating the excesses of the Bush Administration, and indeed any president, would likely face political pressure to reject the claims of executive authority made “politically toxic” by the writings of John Yoo.128 Because of the likely judicial resistance and political difficulties, claiming increased executive authority to prosecute the armed conflict against Al Qaeda would prove a specious and ultimately futile legal strategy. Simply put, forcing the Supreme Court to intervene and overrule the Executive’s national security policy is anathema to good public policy. In such a world, U.S. national security policy would lack stability—confounding cooperation with allies and hindering negotiations with adversaries.

There are, of course, many situations where the president’s position as Commander in Chief provides entirely uncontroversial authority for military actions against terrorists. In 1998, President Clinton ordered cruise missile strikes against Al Qaeda-related targets in Afghanistan and Sudan in response to the embassy bombings in Kenya and Tanzania. In 1986, President Reagan ordered air strikes against Libyan targets after U.S. intelligence linked the bombing of a Berlin discotheque to Libyan operatives.129 Executive authority to launch these operations without congressional approval was not seriously questioned, and no congressional approval was sought.130 To be sure, many of the targeted killing operations carried out today fall squarely within the precedent of past practice supplied by these and other valid exercises of presidential authority. Notwithstanding disagreement about the scope of Congress’s and the president’s “war powers,” few would disagree with the proposition that the president needs no authorization to act in selfdefense on behalf of the country. However, it is equally clear that not all terrorists pose such a threat to the United States, and thus the on terror,”137 further distancing counterterrorism operations from democratic oversight would exacerbate this problem.138 Indeed, congressional oversight of covert operations—which, presumably, operates with full information—is already considered insufficient by many.139 By operating entirely on a covert basis, “the Executive can initiate more conflict than the public might otherwise [be] willing to support.”140

In a world without a valid AUMF, the United States could base its continued worldwide counterterrorism operations on various alternative domestic legal authorities. All of these alternative bases, however, carry with them significant costs—detrimental to U.S. security and democracy. The foreign and national security policy of the United States should rest on “a comprehensive legal regime to support its actions, one that [has] the blessings of Congress and to which a court would defer as the collective judgment of the American political system about a novel set of problems.”141 Only then can the President’s efforts be sustained and legitimate.

2. Effect on the International Law of Self-Defense

A failure to reauthorize military force would lead to significant negative consequences on the international level as well. Denying the Executive Branch the authority to carry out military operations in the armed conflict against Al Qaeda would force the President to find authorization elsewhere, most likely in the international law of selfdefense—the jus ad bellum.142 Finding sufficient legal authority for the United States’s ongoing counterterrorism operations in the international law of self-defense, however, is problematic for several reasons. As a preliminary matter, relying on this rationale usurps Congress’s role in regulating the contours of U.S. foreign and national security policy. If the Executive Branch can assert “self-defense against a continuing threat” to target and detain terrorists worldwide, it will almost always be able to find such a threat.143 Indeed, the Obama Administration’s broad understanding of the concept of “imminence” illustrates the danger of allowing the executive to rely on a self-defense authorization alone.144

This approach also would inevitably lead to dangerous “slippery slopes.” Once the President authorizes a targeted killing of an individual who does not pose an imminent threat in the strict law enforcement sense of “imminence,”145 there are few potential targets that would be off-limits to the Executive Branch. Overly malleable concepts are not the proper bases for the consistent use of military force in a democracy. Although the Obama Administration has disclaimed this manner of broad authority because the AUMF “does not authorize military force against anyone the Executive labels a ‘terrorist,’”146 relying solely on the international law of self defense would likely lead to precisely such a result.

The slippery slope problem, however, is not just limited to the United States’s military actions and the issue of domestic control. The creation of international norms is an iterative process, one to which the United States makes significant contributions. Because of this outsized influence, the United States should not claim international legal rights that it is not prepared to see proliferate around the globe. Scholars have observed that the Obama Administration’s “expansive and open-ended interpretation of the right to self-defence threatens to destroy the prohibition on the use of armed force . . . .”147 Indeed, “[i]f other states were to claim the broad-based authority that the United States does, to kill people anywhere, anytime, the result would be chaos.”148

Encouraging the proliferation of an expansive law of international self-defense would not only be harmful to U.S. national security and global stability, but it would also directly contravene the Obama Administration’s national security policy, sapping U.S. credibility. The Administration’s National Security Strategy emphasizes U.S. “moral leadership,” basing its approach to U.S. security in large part on “pursu[ing] a rules-based international system that can advance our own interests by serving mutual interests.”149 Defense Department General Counsel Jeh Johnson has argued that “[a]gainst an unconventional enemy that observes no borders and does not play by the rules, we must guard against aggressive interpretations of our authorities that will discredit our efforts, provoke controversy and invite challenge.”150 Cognizant of the risk of establishing unwise international legal norms, Johnson argued that the United States “must not make [legal authority] up to suit the moment.”151 The Obama Administration’s global counterterrorism strategy is to “adher[e] to a stricter interpretation of the rule of law as an essential part of the wider strategy” of “turning the page on the past [and rooting] counterterrorism efforts within a more durable, legal foundation.”152

Widely accepted legal arguments also facilitate cooperation from U.S. allies, especially from the United States’ European allies, who have been wary of expansive U.S. legal interpretations.153 Moreover, U.S. strategy vis-à-vis China focuses on binding that nation to international norms as it gains power in East Asia.154 The United States is an international “standard-bearer” that “sets norms that are mimicked by others,”155 and the Obama Administration acknowledges that its drone strikes act in a quasi-precedential fashion.156 Risking the obsolescence of the AUMF would force the United States into an “aggressive interpretation” of international legal authority,157 not just discrediting its own rationale, but facilitating that rationale’s destabilizing adoption by nations around the world.158

Congress is key

Mark David Maxwell, Colonel, Judge Advocate with the U.S. Army, Winter 2012, TARGETED KILLING, THE LAW, AND TERRORISTS, Joint Force Quarterly, http://www.ndu.edu/press/targeted-killing.html

In the wake of the attacks by al Qaeda on September 11, 2001, an analogous phenomenon of feeling safe has occurred in a recent U.S. national security policy: America’s explicit use of targeted killings to eliminate terrorists, under the legal doctrines of selfdefense and the law of war. Legal scholars define targeted killing as the use of lethal force by a state4 or its agents with the intent, premeditation, and deliberation to kill individually selected persons who are not in the physical custody of those targeting them.5 In layman’s terms, targeted killing is used by the United States to eliminate individuals it views as a threat.6 Targeted killings, for better or for worse, have become “a defining doctrine of American strategic policy.”7 Although many U.S. Presidents have reserved the right to use targeted killings in unique circumstances, making this option a formal part of American foreign policy incurs risks that, unless adroitly controlled and defined in concert with Congress, could drive our practices in the use of force in a direction that is not wise for the long-term health of the rule of law.

This article traces the history of targeted killing from a U.S. perspective. It next explains how terrorism has traditionally been handled as a domestic law enforcement action within the United States and why this departure in policy to handle terrorists like al Qaeda under the law of war—that is, declaring war against a terrorist organization—is novel. While this policy is not an ill-conceived course of action given the global nature of al Qaeda, there are practical limitations on how this war against terrorism can be conducted under the orders of the President. Within the authority to target individuals who are terrorists, there are two facets of Presidential power that the United States must grapple with: first, how narrow and tailored the President’s authority should be when ordering a targeted killing under the rubric of self-defense; and second, whether the President must adhere to concepts within the law of war, specifically the targeting of individuals who do not don a uniform. The gatekeeper of these Presidential powers and the prevention of their overreach is Congress. The Constitution demands nothing less, but thus far, Congress’s silence is deafening.

History of Targeted Killing During the Cold War, the United States used covert operations to target certain political leaders with deadly force.8 These covert operations, such as assassination plots against Fidel Castro of Cuba and Ngo Dinh Diem of South Vietnam, came to light in the waning days of the Richard Nixon administration in 1974. In response to the public outrage at this tactic, the Senate created a select committee in 1975, chaired by Senator Frank Church of Idaho, to “Study Government Operations with Respect to Intelligence Activities.”9 This committee, which took the name of its chairman, harshly condemned such targeting, which is referred to in the report as assassination: “We condemn assassination and reject it as an instrument of American policy.”10 In response to the Church Committee’s findings, President Gerald R. Ford issued an Executive order in 1976 prohibiting assassinations: “No employee of the United States Government shall engage in, or conspire to engage in political assassination.”11 The order, which is still in force today as Executive Order 12333, “was issued primarily to preempt pending congressional legislation banning political assassination.”12 President Ford did not want legislation that would impinge upon his unilateral ability as Commander in Chief to decide on the measures that were necessary for national security. 13 In the end, no legislation on assassinations was passed; national security remained under the President’s purview. Congress did mandate, however, that the President submit findings to select Members of Congress before a covert operation commences or in a timely fashion afterward.14 This requirement remains to this day. Targeted killings have again come to center stage with the Barack Obama administration’s extraordinary step of acknowledging the targeting of the radical Muslim cleric Anwar al-Awlaki, a U.S. citizen who lived in Yemen and was a member of an Islamic terrorist organization, al Qaeda in the Arabian Peninsula.15 Al-Awlaki played a significant role in an attack conducted by Umar Farouk Abdulmutallab, the Nigerian Muslim who attempted to blow up a Northwest Airlines flight bound for Detroit on Christmas Day 2009.16 According to U.S. officials, al-Awlaki was no longer merely encouraging terrorist activities against the United States; he was “acting for or on behalf of al-Qaeda in the Arabian Peninsula . . . and providing financial, material or technological support for . . . acts of terrorism.”17 Al-Awlaki’s involvement in these activities, according to the United States, made him a belligerent and therefore a legitimate target. The context of the fierce debates in the 1970s is different from the al-Awlaki debate. The targeted killing of an individual for a political purpose, as investigated by the Church Committee, was the use of lethal force during peacetime, not during an armed conflict. During armed conflict, the use of targeted killing is quite expansive.18 But in peacetime, the use of any lethal force is highly governed and limited by both domestic law and international legal norms. The presumption is that, in peacetime, all use of force by the state, especially lethal force, must be necessary. The Law Enforcement Paradigm Before 9/11, the United States treated terrorists under the law enforcement paradigm—that is, as suspected criminals.19 This meant that a terrorist was protected from lethal force so long as his or her conduct did not require the state to respond to a threat or the indication of one. The law enforcement paradigm assumes that the preference is not to use lethal force but rather to arrest the terrorist and then to investigate and try him before a court of law.20 The presumption during peacetime is that the use of lethal force by a state is not justified unless necessary. Necessity assumes that “only the amount of force required to meet the threat and restore the status quo ante may be employed against [the] source of the threat, thereby limiting the force that may be lawfully applied by the state actor.”21 The taking of life in peacetime is only justified “when lesser means for reducing the threat were ineffective.”22 Under both domestic and international law, the civilian population has the right to be free from arbitrary deprivation of life. Geoff Corn makes this point by highlighting that a law enforcement officer could not use deadly force “against suspected criminals based solely on a determination an individual was a member of a criminal group.”23 Under the law enforcement paradigm, “a country cannot target any individual in its own territory unless there is no other way to avert a great danger.”24 It is the individual’s conduct at the time of the threat that gives the state the right to respond with lethal force. The state’s responding force must be reasonable given the situation known at the time. This reasonableness standard is a “commonsense evaluation of what an objectively reasonable officer might have done in the same circumstances.”25 The U.S. Supreme Court has opined that this reasonableness is subjective: “[t]he calculus of reasonableness must embody allowances for the fact that police officers often are forced to make split-second judgments . . . about the amount of force that is necessary in a particular situation.”26 The law enforcement paradigm attempts to “minimize the use of lethal force to the extent feasible in the circumstances.”27 This approach is the starting point for many commentators when discussing targeted killing: “It may be legal for law enforcement personnel to shoot to kill based on the imminence of the threat, but the goal of the operation, from its inception, should not be to kill.”28 The presumption is that intentional killing by the state is unlawful unless it is necessary for self-defense or defense of others.29 Like the soldier who acts under the authority of self-defense, if one acts reasonably based on the nature of the threat, the action is justified and legal. What the law enforcement paradigm never contemplates is a terrorist who works outside the state and cannot be arrested. These terrorists hide in areas of the world where law enforcement is weak or nonexistent. The terrorists behind 9/11 were lethal and lived in ungovernable areas; these factors compelled the United States to rethink its law enforcement paradigm. The Law of War Paradigm The damage wrought by the 9/11 terrorists gave President George W. Bush the political capital to ask Congress for authorization to go to war with these architects of terror, namely al Qaeda. Seven days later, Congress gave the President the Authorization for the Use of Military Force (AUMF) against those “nations, organizations, or persons [the President] determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations, or persons.”30 For the first time in modern U.S. history, the country was engaged in an armed conflict with members of an organization, al Qaeda, versus a state. The legal justification to use force, which includes targeted killings, against al Qaeda, the Taliban, and associated forces is twofold: self-defense and the law of war.31 In armed conflict, the rules governing when an individual can be killed are starkly different than in peacetime. The law enforcement paradigm does not apply in armed conflict. Rather, designated terrorists may be targeted and killed because of their status as enemy belligerents. That status is determined solely by the President under the AUMF. Unlike the law enforcement paradigm, the law of war requires neither a certain conduct nor an analysis of the reasonable amount of force to engage belligerents. In armed conflict, it is wholly permissible to inflict “death on enemy personnel irrespective of the actual risk they present.”32 Killing enemy belligerents is legal unless specifically prohibited—for example, enemy personnel out of combat like the wounded, the sick, or the shipwrecked.33 Armed conflict also negates the law enforcement presumption that lethal force against an individual is justified only when necessary. If an individual is an enemy, then “soldiers are not constrained by the law of war from applying the full range of lawful weapons.”34 Now the soldier is told by the state that an enemy is hostile and he may engage that individual without any consideration of the threat currently posed. The enemy is declared hostile; the enemy is now targetable. Anticipatory Self-defense

This paradigm shift is novel for the United States. The President’s authority to order targeted killings is clear under domestic law; it stems from the AUMF. Legal ambiguity of the U.S. authority to order targeted killings emerges, however, when it is required to interpret international legal norms like self-defense and the law of war. The United States has been a historic champion of these international norms, but now they are hampering its desires to target and kill terrorists.

Skeptics of targeted killing admit that “[t]he decision to target specific individuals with lethal force after September 11 was neither unprecedented nor surprising.”35 Mary Ellen O’Connell has conceded, for example, that targeted killing against enemy combatants in Afghanistan is not an issue because “[t]he United States is currently engaged in an armed conflict” there.36 But when the United States targets individuals outside a zone of conflict, as it did with alAwlaki in Yemen,37 it runs into turbulence because a state of war does not exist between the United States and Yemen.38 A formidable fault line that is emerging between the Obama administration’s position and many academics, international organizations,39 and even some foreign governments40 is where these targeted killings can be conducted.41

According to the U.S. critics, if armed conflict between the states is not present at a location, then the law of war is never triggered, and the state reverts to a peacetime paradigm. In other words, the targeted individual cannot be killed merely because of his or her status as an enemy, since there is no armed conflict. Instead, the United States, as in peacetime, must look to the threat the individual possesses at the time of the targeting. There is a profound shift of the burden upon the state: the presumption now is that the targeted killing must be necessary. When, for example, the United States targeted and killed six al Qaeda members in Yemen in 2002, the international reaction was extremely negative: the strike constituted “a clear case of extrajudicial killing.”42

The Obama administration, like its predecessor, disagrees. Its legal justification for targeted killings outside a current zone of armed conflict is anticipatory self-defense. The administration cites the inherent and unilateral right every nation has to engage in anticipatory self-defense. This right is codified in the United Nations charter43 and is also part of the U.S. interpretation of customary international law stemming from the Caroline case in 1837. A British warship entered U.S. territory and destroyed an American steamboat, the Caroline. In response, U.S. Secretary of State Daniel Webster articulated the lasting acid test for anticipatory self-defense: “[N]ecessity of self defense [must be] instant, overwhelming, leaving no choice of means and no moment for deliberation . . . [and] the necessity of self defense, must be limited by that necessity and kept clearly within it.”44

A state can act under the guise of anticipatory self-defense. This truism, however, leaves domestic policymakers to struggle with two critical quandaries: first, the factual predicate required by the state to invoke anticipatory self-defense, on the one hand; and second, the protections the state’s soldiers possess when they act under this authority, on the other. As to the first issue, there is simply no guidance from Congress to the President; the threshold for triggering anticipatory self-defense is ad hoc. As to the second issue, under the law of war, a soldier who kills an enemy has immunity for these precapture or warlike acts.45 This “combatant immunity” attaches only when the law of war has been triggered. Does combatant immunity attach when the stated legal authority is self-defense? There is no clear answer.

The administration is blurring the contours of the right of the state to act in Yemen under self-defense and the law of war protections afforded its soldiers when so acting. Therefore, what protections do U.S. Airmen enjoy when operating the drone that killed an individual in Yemen, Somalia, or Libya?

If they are indicted by a Spanish court for murder, what is the defense? Under the law of war, it is combatant immunity. But if the law of war is not triggered because the killing occurred outside the zone of armed conflict, the policy could expose Airmen to prosecution for murder. In order to alleviate both of these quandaries, Congress must step in with legislative guidance. Congress has the constitutional obligation to fund and oversee military operations.46 The goal of congressional action must not be to thwart the President from protecting the United States from the dangers of a very hostile world. As the debates of the Church Committee demonstrated, however, the President’s unfettered authority in the realm of national security is a cause for concern. Clarification is required because the AUMF gave the President a blank check to use targeted killing under domestic law, but it never set parameters on the President’s authority when international legal norms intersect and potentially conflict with measures stemming from domestic law.

But there’s no uniqueness for their DA’s – TK operational policy is already restricted more than the plan mandates

Robert Chesney 14, law prof at UT, “Postwar”, <http://harvardnsj.org/wp-content/uploads/2014/01/Chesney-Final.pdf>

Would shifting to a postwar framework impact the status quo regarding the use of lethal force more so than it does detention? Surprisingly, no.

That some amount of targeting authority would remain even under the postwar rubric is not in doubt. Jeh Johnson said as much, after all, when he indicated that military options would remain available in the postwar period for “continuing and imminent threats.” 35 But that is not the interesting question. The interesting question is whether postwar targeting authority would be narrower than the scope of authority currently asserted by the government even under the armed-conflict model, such that drone strikes—and other exercises of lethal force—in the postwar world would have to be eliminated or at least curtailed substantially as compared to the status quo.

A. Policy Constraints on Attacks Outside the Hot Battlefield

It is tempting to assume that the answer must be yes, that the postwar model surely would be a narrower affair—a much narrower affair —than the status quo when it comes to lethal force. On close inspection, however, that proves not to be the case. Why? For two seemingly contradictory reasons. First, **the government** for reasons of policy **already embraces an approach** that is more restrictive **than the armed-conflict model** arguably **would require**. Second, **the legal framework the government** most likely **would apply in the absence of** the **armed-conflict** model **is** considerably less restrictive than one might expect. Indeed, it is the same **framework that applies already as a matter of policy**.

There’s also link uq – Obama’s openly called for restrictions on authority

Christopher Preble 13, vice president for Defense and Foreign Policy Studies at the Cato Institute, How to End the War on Terrorism Properly, June 10, <http://www.cato.org/publications/commentary/how-end-war-terrorism-properly?utm_source=Cato+Institute+Emails&utm_campaign=d7856100b8-Cato_Today&utm_medium=email&utm_term=0_395878584c-d7856100b8-141711634&mc_cid=d7856100b8&mc_eid=719812f23e>

In his speech on counterterrorism last month, President Barack Obama said something both profound and overdue — the war underway since 2001 **should** **end, not just factually but also legally**. Outlining his views, the president said he **wanted to** “refine, and ultimately repeal,” the Authorization for Use of Military Force (AUMF), the main legislative vehicle governing U.S. counterterrorism operations around the world. **He also** pledged not to sign **laws designed to expand this mandate further.**

“The most successful counterterrorism operations involve timely intelligence collection and analysis, not open-ended military operations involving large deployments of U.S. troops.”

But to make that goal a concrete reality, the president should have called for legislation repealing the administration’s authority for war — sunsetting the AUMF, which provides the legal authorization for our troops in Afghanistan, once combat operations there conclude at the end of 2014. Future counterterrorism operations can rely on the plentiful authorities the executive branch already has, including some that have been added since 9/11. And if this president — or any other in the future — needs greater war powers to deal with a threat, they can return to Congress and ask for specific, limited authorities tailored to address the future challenge.

Executive “clarification” fails

Laurie Blank, Emory International Humanitarian Law Clinic Director, Professor, 10/10/13, “Raid Watching” and Trying to Discern Law from Policy, today.law.utah.edu/projects/raid-watching-and-trying-to-discern-law-from-policy/

Trying to identify and understand the legal framework the United States believes is applicable to counterterrorism operations abroad sometimes seems quite similar to “Fed watching,” the predictive game of trying to figure out what the Federal Reserve is likely to do based on the hidden meaning behind even the shortest or most cryptic of comments from the Chairman of the Federal Reserve. With whom exactly does the United States consider itself to be in an armed conflict? Al Qaeda, certainly, but what groups fall within that umbrella and what are associated forces? And to where does the United States believe its authority derived from this conflict reaches?

On Saturday, U.S. Special Forces came ashore in Somalia and engaged in a firefight with militants at the home of a senior leader of al Shabaab; it is unknown whether the target of the raid was killed. I must admit, my initial reaction was to wonder whether official information about the raid would give us any hints — who was the target and why was he the target? What were the rules of engagement (ROE) for the raid (in broad strokes, because anything specific is classified, of course)? And can we make any conclusions about whether the United States considers that its armed conflict with al Qaeda extends to Somalia or whether it believes that al Shabaab is a party to that armed conflict or another independent armed conflict?

The reality, however, is that this latest counterterrorism operation highlights once again the conflation of law and policy that exemplifies the entire discourse about the United States conflict with al Qaeda and other U.S. counterterrorism operations as well. And that using policy to discern law is a highly risky venture.

The remarkable series of public speeches by top Obama Administration legal advisors and national security advisors, the Department of Justice White Paper, and the May 2013 White House fact sheet on U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities all appear to offer extensive explanations of the international legal principles governing the use of drone strikes against al-Qaeda operatives in various locations around the globe, as well as related counterterrorism measures. In actuality, they offer an excellent example of the conflation of law and policy and the consequences of that conflation.

Policy and strategic considerations are without a doubt an essential component of understanding contemporary military operations and the application of international law. However, it is equally important to distinguish between law and policy, and to recognize when one is driving analysis versus the other.

The law regarding the use of force against an individual or group outside the borders of the state relies on one of two legal frameworks: the law of armed conflict (LOAC) and the international law of self-defense (jus ad bellum). During armed conflict, LOAC applies and lethal force can be used as a first resort against legitimate targets, a category that includes all members of the enemy forces (the regular military of a state or members of an organized armed group) and civilians who are directly participating in hostilities. Outside of armed conflict, lethal force can be used in self-defense against an individual or group who has engaged in an armed attack – or poses an imminent threat of such an attack, where the use of force is necessary and proportionate to repel or deter the attack or threat.

The United States has consistently blurred these two legal justifications for the use of force, regularly stating that it has the authority to use force either as part of an ongoing armed conflict or under self-defense, without differentiating between the two or delineating when one or the other justification applies. From the perspective of the policymaker, the use of both justifications without further distinction surely offers greater flexibility and potential for action in a range of circumstances. From the perspective of careful legal analysis, however, it can prove problematic.

In effect, it is U.S. policy to eliminate “bad guys” — whether by use of lethal force or detention — who are attacking or posing a threat to the United States or U.S. interests. Some of these “bad guys” are part of a group with whom we are in an armed conflict (such as al Qaeda); some pose an imminent threat irrespective of the armed conflict; some are part of a group that shares an ideology with al Qaeda or is linked in some more comprehensive way. Drone strikes, Special Forces raids, capture — each situation involves its own tactical plans and twists.

But do any of these specific tactical choices tell us anything in particular about whether LOAC applies to a specific operation? Whether the United States believes it applies? Unfortunately, not really. Take Saturday’s raid in Somalia, for example. Some would take the use of lethal force by the United States against a member of al Shabaab in Somalia to suggest that the United States views al Shabaab as part of the conflict with al Qaeda, or that the United States views the geographical arena of the conflict as extending at least into Somalia. Others analyze it through the lens of self-defense, because news reports suggest that U.S. forces sought to capture the militant leader and used deadly force in the process of trying to effectuate that capture.

Ultimately, however, the only certain information is that the United States viewed this senior leader of al Shabaab as a threat – but whether that threat is due to participation in an armed conflict or due to ongoing or imminent attacks on the United States is not possible to discern. Why? Because more than law guides the planning and execution of the mission. Rules of engagement (ROE) are based on law, strategy and policy: the law forms the outer parameters for any action; ROE operate within that framework to set the rules for the use of force in the circumstances of the particular military mission at hand, the operational imperatives and national command policy.

The fact that the operation may have had capture as its goal, if feasible, does not mean that it could only have occurred outside the framework of LOAC. Although LOAC does not include an obligation to capture rather than kill an enemy operative — it is the law enforcement paradigm applicable outside of armed conflict that mandates that the use of force must be a last resort — ROE during an armed conflict may require attempt to capture for any number of reasons, including the desire to interrogate the target of the raid for intelligence information. Likewise, the use of military personnel and the fact that the raid resulted in a lengthy firefight does not automatically mean that armed conflict is the applicable framework — law enforcement in the self-defense context does narrowly prescribe the use of lethal force, but that use of force may nonetheless be robust when necessary.

“Raid-watching” — trying to predict the applicable legal framework from reports of United States strikes and raids on targets abroad — highlights the challenges of the conflation of law and policy and the concomitant risks of trying to sift the law out from the policy conversation. First, determining the applicable legal framework when two alternate, and even opposing, frameworks are presented as the governing paradigm at all times is extraordinarily complicated. This means that assessing the legality of any particular action or operation can be difficult at best and likely infeasible, hampering efforts to ensure compliance with the rule of law. Second, conflating law and policy risks either diluting or unnecessarily constraining the legal regimes. The former undermines the law’s ability to protect persons in the course of military operations; the latter places undue limits on the lawful strategic options for defending U.S. interests and degrading or eliminating enemy threats. Policy can and should be debated and law must be interpreted and applied, but substituting policy for legal analysis ultimately substitutes policy’s flexibility for the law’s normative foundations.

# 2AC

## at: martin

The US doesn’t comply with Geneva ever and no one cares

Goldsmith, 2K

(Law Prof-Harvard, “Should International Human Rights Law Trump US Domestic Law?” 1 Chi. J. Int'l L. 327, Fall, Lexis)

Many nonetheless believe that the United States' failure to domesticate human rights treaties diminishes the legitimacy of international human rights law and makes it less likely that other nations will comply with this law. This position reflects an inappropriately law-centered conception of human rights progress. **Nations that increase protection for their citizens' human rights rarely do so because of the pull of international law**. Europe appears to be, but is not, a counterexample. As Andrew Moravcsik has shown, the successful European human rights system was made possible by a "prior convergence of domestic practices and institutions" in support of democracy and human rights. n32 The European system provided the monitoring, information, and focal points that assisted domestic governments and groups already committed to human rights protections but unable to provide these rights through domestic institutions. n33 The European system contrasts with the international human rights regime in Latin America, which, though legally similar, has been relatively unsuccessful because it has little support from domestic groups there. n34 The inadequacy of a legalistic approach to human rights progress can be seen in another way. The two most influential human rights instruments this century--the Universal Declaration and the Helsinki Accords--were not legally binding documents. These instruments succeeded because their ideas, in combination with other world events, aroused domestic groups, helped them to organize, and incited them to action. Their technical status as non-legal documents mattered little to these ends. Similarly, **neither the act of nor the success of human rights shaming strategies depend on the legal status of moral norms.** China was criticized for its human rights abuses long before it signed the ICCPR. The United States was shamed before the world by its race discrimination practices in the 1950s and 1960s long before there was an international law prohibition against such discrimination. When nations criticize the United States for its juvenile death penalty, it matters not a bit that there is no international rule binding on the United States that prohibits this practice. Of course, rhetoric of illegality is often--and often irresponsibly--used in criticizing human rights practices. But it is the moral quality of the act, and not its legal validity, that provokes such criticisms. When shaming works, it is the perceived moral quality of the shamed practice, and not its illegality, that matters. Many claim that the US practice of not incorporating international human rights law is inherently immoral because it is hypocritical. Hypocrisy is the act of professing virtues one does not hold. Hypocrisy is not the unambiguous evil that it is usually made out to be; it often serves an honorable and important role in domestic and international politics. n35 But in any event, the US failure to domesticate international human rights law is not hypocritical, for the United States does not urge substantive standards on others that it does not itself embrace. It is, I believe, hypocritical when politicians in the United States who otherwise disdain international law invoke the rhetoric of international law in criticizing the behavior of other nations. But these hypocritical acts in no way impugn the United States's perfectly legal and appropriate disinclination to incorporate human rights law.

No arctic conflict

Dyer 12 (Gwynne Dyer, OC is a London-based independent Canadian journalist, syndicated columnist and military historian., His articles are published in 45 countries, 8/4/2012, "Race for Arctic Mostly Rhetoric", www.winnipegfreepress.com/opinion/columnists/race-for-arctic-mostly-rhetoric-164986566.html)

Russian television contacted me last night asking me to go on a program about the race for Arctic resources. The ice is melting fast, and it was all the usual stuff about how there will be big strategic conflicts over the seabed resources -- especially oil and gas -- that become accessible when it's gone. The media always love conflict, and now that the Cold War is long gone, there's no other potential military confrontation between the great powers to worry about. Governments around the Arctic Ocean are beefing up their armed forces for the coming struggle, so where are the flashpoints and what are the strategies? It's great fun to speculate about possible wars. In the end I didn't do the interview because the Skype didn't work, so I didn't get the chance to rain on their parade. But here's what I would said to the Russians if my server hadn't gone down at the wrong time. First, you should never ask the barber if you need a haircut. The armed forces in every country are always looking for reasons to worry about impending conflict, because that's the only reason their governments will spend money on them. Sometimes they will be right to worry, and sometimes they will be wrong, but right or wrong, they will predict conflict. Like the barbers, it's in their professional interest to say you need their services. So you'd be better off to ask somebody who doesn't have a stake in the game. As I don't own a single warship, I'm practically ideal for the job. And I don't think there will be any significant role for the armed forces in the Arctic, although there is certainly going to be a huge investment in exploiting the region's resources. There are three separate "resources" in the Arctic. On the surface, there are the sea lanes that are opening up to commercial traffic along the northern coasts of Russia and Canada. Under the seabed, there are potential oil and gas deposits that can be drilled once the ice retreats. And in the water in between, there is the planet's last unfished ocean. The sea lanes are mainly a Canadian obsession, because the government believes the Northwest Passage that weaves between Canada's Arctic islands will become a major commercial artery when the ice is gone. Practically every summer, Prime Minister Stephen Harper travels north to declare his determination to defend Canada's Arctic sovereignty from -- well, it's not clear from exactly whom, but it's a great photo op. Canada is getting new Arctic patrol vessels and building a deep-water naval port and Arctic warfare training centre in the region, but it's all much ado about nothing. The Arctic Ocean will increasingly be used as a shortcut between the North Atlantic and the North Pacific, but the shipping will not go through Canadian waters. Russia's "Northern Sea Route" will get the traffic, because it's already open and much safer to navigate. Then there's the hydrocarbon deposits under the Arctic seabed, which the U.S. Geological Survey has forecast may contain almost one-fourth of the world's remaining oil and gas resources. But from a military point of view, there's only a problem if there is some disagreement about the seabed boundaries. There are only four areas where the boundaries are disputed. Two are between Canada and its eastern and western neighbours in Alaska and Greenland, but there is zero likelihood of a war between Canada and the United States or Denmark (which is responsible for Greenland's defence). In the Bering Strait, there is a treaty defining the seabed boundary between the United States and Russia, signed in the dying days of the Soviet Union, but the Russian Duma has refused to ratify it. The legal uncertainty caused by the dispute, however, is more likely to deter future investment in drilling there than lead to war. And then there was the seabed-boundary dispute between Norway and Russia in the Barents Sea, which led Norway to double the size of its navy over the past decade. But last year, the two countries signed an agreement dividing the disputed area right down the middle and providing for joint exploitation of its resources. So no war between NATO (of which Norway is a member) and the Russian Federation. Which leaves the fish, and it's hard to have a war over fish. The danger is rather that the world's fishing fleets will crowd in and clean the fish out, as they are currently doing in the Southern Ocean around Antarctica. If the countries with Arctic coastlines want to preserve this resource, they can only do so by creating an international body to regulate the fishing. And they will have to let other countries fish there, too, with agreed catch limits, since they are mostly international waters. They will be driven to co-operate, in their own interests. So no war over the Arctic. All we have to worry about now is the fact the ice is melting, which will speed global warming (because open water absorbs far more heat from the sun than highly reflective ice), and ultimately melt the Greenland icecap and raise sea levels worldwide by seven metres. But that's a problem for another day.

Just to be safe – zero chance co-application gets resolved absent the plan, no uq

Laurie Blank, Director, International Humanitarian Law Clinic, Emory Law School, 2012, Targeted Strikes: The Consequences of Blurring the Armed Conflict and Self-Defense Justifications, http://www.wmitchell.edu/lawreview/Volume38/documents/11.BlankFINAL.pdf

Using both the armed conflict and self-defense justifications for all targeted strikes, whether in Pakistan, Yemen, Somalia, or elsewhere, may be an easy way to communicate to the public that the state is using force to eliminate “bad guys.” It certainly adds a great degree of flexibility to policy-making and decision-making, which is highly valuable from the perspective of political leaders. **The costs of allowing the lines between legal regimes and paradigms to become blurred, however, are far too great**.

A. Fulfillment of the Core Purposes of the Law

One core purpose of the LOAC is the protection of innocent civilians by minimizing harm to civilians and civilian objects during wartime. Another is to enable effective military operations within the boundaries of the law. A central purpose of human rights law is the protection of individuals from violation of their rights and overreaching, even—and especially—during times of national emergency. Blurring the lines between armed conflict and selfdefense and the targeting authority relevant to each legal regime directly affects all three of these critical goals. First, the hard-todefine parameters of an ongoing armed conflict with terrorist groups raise serious concerns about too many areas being subsumed within an area of armed conflict and the use of lethal force as a first resort. As more and more areas are viewed as part of the “zone of combat,” more innocent civilians will face the consequences of hostilities, whether unintended death, injury, or property damage. This result runs counter to both the LOAC and human rights law. The potential spillover between status-based targeting and direct participation in the armed conflict framework and imminence and necessity (but without belligerent nexus) in the self-defense framework provoke similar consternation with regard to the protective and discriminating purposes of both bodies of law.

At the same time, the blending of proportionalities and rules regarding obligations to capture, rather than kill, risk importing too much of the law enforcement and human rights paradigm into the battlefield. Imagine the consequences for units on patrol if, after coming upon recognized hostile enemy forces, they were required to wait for those forces to fire first before opening fire. Mission accomplishment would become significantly more difficult and force protection considerations could reach a problematic level.

**The ability to deliberately attack enemy belligerents with the full force** of combat power available for mission accomplishment—an authority that implicitly allows the use of deadly force as a measure of first resort—**is an essential aspect of armed hostilities** between organized belligerent groups. Indeed, the ability to mass the effects of combat power at the decisive place and time often contributes to accelerating enemy capitulation, thereby sparing many enemy belligerents who might otherwise be subject to a loss of life even if a minimum necessary force obligation were applied.137

Such developments simply do not comport with the basic tenet of the LOAC that a belligerent has the right to use any and all measures necessary to bring about the complete submission of the enemy as soon as possible and which are not forbidden by the laws of war.138

B. Development and Implementation of the Law Going Forward

**Blurring the lines between legal paradigms has longer-term consequences** as well for the development and implementation of the law in the future. For example, one fundamental aspect of the LOAC is how it defines categories of individuals.139 How the law categorizes persons within an armed conflict is critical to the protections and rights such persons enjoy, giving this definitional aspect of the law great reach. Revisiting the substantive debate about whether suspected terrorist operatives are criminals or belligerents (whether entitled to prisoner of war status or not) is beyond the scope of this article. However, it is particularly interesting to note that in the course of nearly ten years of debate, conversation, legislation, and judicial opinions attempting to create and set the parameters of the category of enemy combatant, nearly all of that debate has focused on which legal paradigm to apply, not on the fact that these are individuals with basic rights. As the legal paradigms are now blurred—at least with regard to targeting—with the continual use of both paradigms to justify all strikes, further careful development and delineation between the armed conflict and self-defense framework will unfortunately remain stalled and pragmatic concerns about basic rights lost in the shuffle.

Beyond these ground-level concerns, the conflation of legal regimes also creates numerous missed opportunities to explore and engage the complex issues that arise on the hard-to-identify lines between armed conflict and self-defense. The past year or two has brought growing discussion about the geographic parameters of an armed conflict between a state and terrorist groups, from the question of whether any such parameters do exist to the follow-on questions of what those boundaries might be and from where to draw guiding principles for such analysis.140 This discussion is important not just for the sake of finding “answers” to these hard questions but—perhaps more—for the purpose of understanding the key issues and principles inherent in the analysis and the competing rights and values at stake. The LOAC has traditionally balanced a variety of interests, such as military necessity and humanity, and has developed over the years in response to the needs and changes of those in combat and those suffering from the deliberate and incidental effects of combat. Failure to engage directly with the tough issues that lie at the heart of the distinction between where a state is acting as part of an armed conflict and where it is acting solely in legitimate self-defense against a terrorist or other threat is, ultimately, a wasted opportunity to promote greater development in the law going forward. Non-answers to hard questions may be easy, but they are rarely productive in the end.

C. Enforcement Through Both Formal and Informal Means

Finally, effective implementation of and compliance with the law, whether the LOAC, the law of self-defense, or human rights law, depends on regular and respected mechanisms for enforcement. In the arena of international law, both formal (courts and tribunals) and informal (public opinion, response from other states) enforcement have value and effect. Any judicial body determining the lawfulness of state action or the criminal responsibility of individuals must first determine the applicable law in order to reach an appropriate result.141 **When the legal regimes become blurred through repeated conflation, application of the law and thus enforcement will be hampered**. **The resulting consequence**, of course, **is that a lack of effective enforcement then undermines effective implementation of the law and protection of persons in the future**. These problems often are highlighted in the more informal enforcement arena of media reporting, public opinion, advocacy reports, and other responses, where disputes over applicable law and appropriate analyses abound. When international or nongovernmental organization reports produce primarily disputes over which law is applied—rather than how the law is applied to the facts on the ground—the debate becomes centered on the law and legal disputes rather than on the victims, the perpetrators, and how to prevent legal violations in the future. The blurring of lines between armed conflict and self-defense takes these challenges to another level as well, however, creating a situation in which independent analysts may have difficulty identifying the key pieces of information necessary to an effective examination of the legality of the state’s policies and actions.

## t-restrict

“Restrictions” are on time, place, and manner – this includes the scope of authority

Lobel, professor of law at the University of Pittsburgh, 2008

(Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War,” Ohio State Law Journal, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf)

Throughout American history, Congress has placed restrictions on the President’s power as Commander in Chief to conduct warfare. On numerous occasions, **Congress has authorized the President to conduct warfare but placed significant restrictions on the time**, **place and manner of warfare**. Congress has regulated the tactics the President could employ, the armed forces he could deploy, the geographical area in which those forces could be utilized, and the time period and specific purposes for which the President was authorized to use force. Its regulations have both swept broadly and set forth detailed instructions and procedures for the President to follow. This historical practice is consistent with the Constitution’s text and Framers’ intent, which made clear that the President was not to have the broad powers of the British King, but was subject to the control and oversight of Congress in the conduct of warfare.

War powers authority refers to the President’s authority to execute warfighting operations—that includes self-defense justifications

Manget, law professor at Florida State and formerly in the Office of the General Counsel at the CIA, No Date

(Fred, “Presidential War Powers,” http://media.nara.gov/dc-metro/rg-263/6922330/Box-10-114-7/263-a1-27-box-10-114-7.pdf)

**The President has constitutional authority to order defensive military action in response to aggression without congressional approval**. This theory of **self-defense has justified many military actions**, from the Barbary Coast to the Mexican-American War to the Tonkin Gul£. 29 The Supreme Court has agreed. In The Prize Cases, it found that President Lincoln had the right to blockade southern states without a congressional declaration of war: "If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. " 30 In a case arising out of the Vietnam war, the defendant claimed that draft law was unconstitutionally applied to him because Congress had not declared war. The court rejected that claim, stating that on the basis of the Commander in Chief power, "Unquestionably the President can start the gun at home or abroad to meet force with force. " 3 1 **When the President acts in defense of the nation**, **he acts under war powers authority**.

3. Protection of Life and Property

The President also has the power to order military intervention in foreign countries to protect American citizens and property without prior congressional approval.32 This theory has been cited to justify about 200 instances of use of force abroad in the last 200 years.33 The theory was given legal sanction in a case arising from the bombardrment of a Nicaraguan court by order of the President in 1854, in retaliation for an attack on an American consul. The court stated that it is the President to whom ".. . citizens abroad must look for protection of person and property. . . . The great object and duty of Government is the protection of the lives, liberty, and property of the people composing it, whether abroad or at home.'3~Other cases have been in accord.35 The President may use force or any other means to protect American citizens in foreign countries under his war powers authority. This extends even to a retaliatory military strike against a country supporting terrorist acts against Americans, which occurred in April1986 when US Navy and Air Force aircraft bombed the modern Barbary Coast nation of Libya.

4. Collective Security

The President may also authorize military operations without prior congressional approval pursuant to collective security agreements such as NA TO or OAS treaties. Unilaterial presidential action under these agreements may be justified as necessary for the protection of national security even though hostilities occur overseas and involve allies.36

5. National Defense Power

The President's war powers authority is actually a national defense power that exists at all times, whether or not there is a war declared by Congress, an armed conflict, or any other hostilities or fighting. In a recent case the Supreme Court upheld the revocation of the passport of a former CIA employee (Agee) and rejected his contention that certain statements of Executive Branch policy were entitled to diminished weight because they concerned the powers of the Executive in wartime. The Court stated: "History eloquently attests that grave problems of national security and foreign policy are by no means limited to times of formally declared war. "3; Another court has said that the war power is not confined to actual engagements on fields of battle only but embraces every aspect of national defense and comprehends everything reQuired to wage war successfully.3H A third court stated: "It is-and must be-true that the Executive should be accorded wide and normally unassailable discretion with respect to the conduct of the national defense and the prosecution of national objectives through military means."39

Thus, the Executive Branch 's constitutional war powers authority does not spring into existence when Congress declares war, nor is it dependent on there being hostilities. It empowers the President to prepare for war as well as wage it, in the broadest sense. It operates at all times.

6. Role of the Military

The fundamental function of the armed forces is to fight or to be ready to fight wars. 40 The Supreme Court has recognized the existence of limited, partial, and undeclared wars:41 Thus, there is a judicially recognized and legitimate activity of the armed services in times of no armed conflict that stems directly from **the war powers authority of the President**. That activity is the preparation for the successful waging of war, which may come in any form or level of conflict. **Any actions of the Executive Branch that** are part of the fundamental functions of the armed services in **ready**ing **for any type of hostility are based on** constitutional **war powers authority of the President**.

“On” means there’s no limits disad

Dictionary.com, http://dictionary.reference.com/browse/on

On

preposition

1.so as to be or remain supported by or suspended from: Put your package down on the table; Hang your coat on the hook.

2.so as to be attached to or unified with: Hang the picture on the wall. Paste the label on the package.

## self-restraint

Congressional restriction key to credibility and signal

Kenneth Anderson, Professor of Law, Washington College of Law, American University, and Research Fellow, The Hoover Institution, Stanford University and Member of its Task Force on National Security and the Law, 5/11/2009, Targeted Killing in U.S. Counterterrorism Strategy and Law, http://www.brookings.edu/~/media/research/files/papers/2009/5/11%20counterterrorism%20anderson/0511\_counterterrorism\_anderson.pdf

What Should Congress Do?

Does this analysis offer any practical policy prescriptions for Congress and the administration? The problem is not so much a need for new legislation to create new structures or new policies. The legislative category in which many instances of targeted killing might take place in the future already exists. The task for Congress and the administration, rather, is instead to preserve a category that is likely to be put under pressure in the future and, indeed, is already seen by many as a legal non-starter under international law.

Before addressing what Congress should do in this regard, we might ask from a strictly strategic political standpoint whether, given that the Obama Administration is committed to this policy anyway, whether it is politically prudent to draw public attention to the issue at all. Israeli officials might be threatened with legal action in Spain; but so far no important actor has shown an appetite for taking on the Obama Administration. Perhaps it is better to let sleeping political dogs lie.

These questions require difficult political calculations. However, the sources cited above suggest that even if no one is quite prepared at this moment to take on the Obama Administration on targeted killing, the intellectual and legal pieces of the challenge are already set up and on the table. Having asserted certain positions concerning human rights law and its application and the United States having unthinkingly abandoned its self-defense rationale for its policy, the play can be made at any time—at some later time in the Obama Administration or in the next Republican administration, prying apart the “American” position to create a de facto alliance among Democrats **and Europeans and thereby undermining the ability of the United States to craft a unified American security strateg**y.101 **The U**nited **S**tates **would be best served if the Obama Administration did that exceedingly rare thing in international law and diplomacy: Getting the U**nited **S**tates **out in front of the issue by making plain the American position**, **rather than merely reacting** in surprise when its sovereign prerogatives are challenged by the international soft-law community.

The deeper issue here is not merely a strategic and political one about targeted killing and drones but goes to the very grave policy question of whether it is time to move beyond the careful ambiguity of the CIA’s authorizing statute in referring to covert uses of force under the doctrines of vital national interest and self-defense. Is it time to abandon strategic ambiguity with regards to the Fifth Function and assert the right to use force in self-defense and yet in “peacetime”—that is, outside of the specific context of an armed conflict within the meaning of international humanitarian law? Quite possibly, the strategic ambiguity, in a world in which secrecy is more and more difficult, and in the general fragmentation of voice and ownership of international law, has lost its raison d’etre. This is a larger question than the one undertaken here, but on a range of issues including covert action, interrogation techniques, detention policy, and others, **a general approach of overt legislation that removes ambiguity is to be preferred**.

**The single most important role for Congress to play** in addressing targeted killings, **therefore, is the open, unapologetic, plain insistence that the American understanding of international law on this issue of self-defense is legitimate**. The assertion, that is, that the United States sees its conduct as permissible for itself and for others. **And it is the** putting of congressional strength behind the official statements of the executive branch as the opinio juris of the United States, **its authoritative view of what international law is on this subject**. If this statement seems peculiar, that is because the task—as fundamental as it is—remains unfortunately poorly understood.

Yet if it is really a matter of political consensus between Left and Right that targeted killing is a tool of choice for the United States in confronting its non-state enemies, then this **is an essential task for Congress to play in support of** the **Obama** Administration **as it seeks to** speak with a single voice **for the United States** to the rest of the world. The Congress needs to backstop the administration in asserting to the rest of the world— including to its own judiciary—how the United States understands international law regarding targeted killing. And it needs to make an unapologetic assertion that its views, while not dispositive or binding on others, carry international authority to an extent that relatively few others do—even in our emerging multi-polar world. International law traditionally, after all, accepts that states with particular interests, power, and impact in the world, carry more weight in particular matters than other states. The American view of maritime law matters more than does landlocked Bolivia’s. American views on international security law, as the core global provider of security, matter more than do those of Argentina, Germany or, for that matter, NGOs or academic commentators. But it has to speak—and speak loudly—if it wishes to be heard. It is an enormously important instance of the need for the United States to re-take “ownership” of international law— not as its arbiter, nor as the superpower alone, but as a very powerful, very important, and very legitimate sovereign state.

Intellectually, **continuing to squeeze** all forms and instances of targeted killing **by standoff platform** under the law of IHL armed conflict **is** probably **not** the most analytically **compelling** way to proceed. **It is certainly not a practical long-term approach.** Not everyone who is an intuitively legitimate target from the standpoint of self-defense or vital national security, after all, will be already part of an armed conflict or combatant in the strict IHL sense. Requiring that we use such IHL concepts for a quite different category is likely to have the deleterious effect of deforming the laws of war, over the long term—**starting**, for example, **with the idea of a “global war**,” which **is** itself **a** certain **deformation of** the IHL **concept of hostilities** and armed conflict.

## tpa

No risk of protectionism and no impact

Daniel Drezner 14, IR prof at Tufts, The System Worked: Global Economic Governance during the Great Recession, World Politics, Volume 66. Number 1, January 2014, pp. 123-164

A closer look, however, reveals that warnings about an increase in protectionism have been vastly overstated. The surge in nontariff barriers following the 2008 financial crisis quickly receded; indeed, as Figure 3 shows, the surge never came close to peak levels of these cases. By 2011, antidumping initiations had declined to their lowest levels since the founding of the wro in 1995. Both countervailing duty complaints and safeguards initiations have also fallen to precrisis levels. Some post-2008 measures are not captured in these traditional metrics of nontariff barriers, but similar results hold. Most temporary trade barriers were concentrated in countries such as Russia and Argentina that had already erected higher barriers to global economic integration.50 Even including these additional measures, the combined effect of protectionist actions for the first year after the peak of the financial crisis affected less than 0.8 percent of global trade.51 Furthermore, the use of these protectionist measures declined further in 2010 to cover only 0.2 percent of global trade. Five years after the start of the Great Recession, the effect of these measures remains modest, affecting less than 4 percent of global trade flows. The wro's June 2013 estimate is that the combined effect of all postcrisis protectionist measures by the G20 had reduced trade flows by a total of 0.2 percent.52 The wro estimate jibes with academic estimates of post-2008 trade protectionism playing a minimal role in affecting cross-border exchange. The overwhelming consensus is that "the Great Recession of 2009 does not coincide with any obvious increase in protectionism."53 The quick turnaround and growth in trade levels further show that these measures have not seriously impeded market access.54 The multilateral trade system played a significant role in this outcome. The wto's dispute-settlement mechanism helped to contain the spread of protectionist measures that the Great Recession triggered; there is no evidence that compliance with these rulings waned after 2008.55 This is consistent with research that shows membership in the wto and related organizations acted as a significant brake on increases in tariffs and nontariff barriers.56 The major trading jurisdictions—the United States, the European Union, and China—adhered most closely to their wto obligations. As Alan Beattie acknowledged: "The 'Doha Round' of trade talks may be dead, but the wto's dispute settlement arm is still playing a valuable role."5/ The wto's Government Procurement Agreement (gpa) helped to blunt the most blatant parts of the "Buy American" provisions of the 2009 fiscal stimulus, thereby preventing; a cascade of "fiscal protectionism." Policy advocates of trade liberalization embrace the "bicycle theory" —the belief that unless multilateral trade liberalization moves forward, the entire global trade regime will collapse because of a lack of forward momentum.58 The last four years suggest that there are limits to that rule of thumb. The Financial T/w^/Economist Intelligence Unit surveys of global business leaders reveal that concerns about protectionism have stayed at a low level. Figure 4 shows that compared with popular concerns about economic and political uncertainty, corporate executives were far less concerned about either protectionism or currency volatility. Reviewing the state of world trade, Uri Dadush and his colleagues conclude: "The limited resort to protectionism was a remarkable aspect of the Great Recession."59 Former US trade representative Susan Schwab concurs, noting, "Although countries took protectionist measures in the wake of the crisis, the international community avoided a quick deterioration into a spiral of beggar-thy-neighbor actions to block imports."60 At a minimum, the bicycle of world trade is still coasting forward. From the earliest stages of the financial crisis, there was also concerted and coordinated action among central banks to ensure both discounting and countercyclical lending. Indeed, even global governance skeptics acknowledge the success of global economic governance on this point.61 As the extent of the subprime mortgage crisis became clear, central banks of the major economies slowly cut interest rates in the fall of 2007. A few months later, the central banks of the United States, Canada, the United Kingdom, Switzerland, and the eurozone announced currency swaps to ensure liquidity.62 By the fall of2008 they were cutting rates ruthlessly and in a coordinated fashion—"the first globally coordinated monetary easing in history," as one assessment put it.63 Global real interest rates fell from an average of 3 percent prior to the crisis to zero in 2012—in the advanced industrialized economies, the real interest rate was effectively negative.64 Not content with lowering interest rates, most of the major central banks also expanded emergency credit facilities and engaged in more creative forms of quantitative easing. Between 2007 and 2012, the balance sheets of the central banks in the advanced industrialized economies more than doubled. The Bank for International Settlements acknowledged in its 2012 annual report that "decisive action by central banks during the global financial crisis was probably crucial in preventing a repeat of the experiences of the Great Depression."65 Central banks and finance ministries also took coordinated action during the fall of 2008 to try to ensure that cross-border lending would continue, so as to avert currency and solvency crises. In October of that year, the G7 economies plus Switzerland agreed to unlimited currency swaps in order to ensure that liquidity would be maintained in the system. The United States then extended its currency-swap facility to Brazil, Singapore, Mexico, and South Korea. The European Central Bank expanded its swap arrangements for euros with Hungary, Denmark, and Poland. China, Japan, South Korea, and the asean economies broadened the Chang Mai Initiative into an $80 billion swap arrangement to ensure liquidity. The International Monetary Fund also negotiated emergency financing for Hungary, Pakistan, Iceland, and Ukraine. In the ten months after September 2008, the IMF executed more than $140 billion in stand-by arrangements to seventeen countries.66 Over the longer term, the great powers bulked up the resources of the international financial institutions to provide for further countercyclical lending. In 2009 the G20 agreed to triple the imf's reserves to $750 billion. In 2012, in response to the worsening European sovereign debt crisis, G20 countries combined to pledge more than $430 billion in additional resources. The Fund created multiple new credit facilities for its least developed members and established a flexible credit line that enabled members to sign up for precautionary arrangements without triggering market panic. Multiple outside reviews of the imf's performance concluded that the IMF response to the Great Recession "was larger in magnitude, was more rapid, and carried fewer conditions" than in prior crises.67 The World Bank's International Development Association (ida), which offers up the most concessionary form of lending, also increased its resources. The sixteenth ida replenishment in December 2010 was a record $49.3 billion, an 18 percent increase of ida resources from three years earlier. Using Kindleberger's criteria, global economic governance worked rather well in response to the 2008 financial crisis. To be sure, there are global public goods that go beyond Kindleberger's initial criteria, as Kindleberger and successive ipe scholars have observed. Macroeconomic policy coordination would be an additional area of possible cooperation, as would coordinating and clarifying crossborder financial regulations. Again, however, the international system acted in these areas after 2008. Between late 2007 and the June 2010 G20 Toronto summit, the major economies agreed on the need for aggressive and expansionary fiscal and monetary policies in the wake of the financial crisis. Even reluctant contributors like Germany—whose finance minister blasted the "crass Keynesianism" of these policies in December 2008—eventually bowed to pressure from economists and G20 peers. Indeed, in 2009 Germany enacted the third largest fiscal stimulus in the world.68 Germany's actions, which contravened its ordoliberal preferences, are an example of global economic governance leading to greater policy coordination.69

TPP talks fail

Herman 14

Lawrence L. Herman, Herman & Associates, Toronto, is a senior fellow at the C.D. Howe Institute and former counsel at Cassels Brock & Blackwell LLP, Financial Post, January 10, 2014, "Darkening clouds threaten Trans-Pacific Partnership deal", http://opinion.financialpost.com/2014/01/10/darkening-clouds-threaten-trans-pacific-partnership-deal/

A lot is at stake. Should the talks succeed, Canada and all TPP participants will gain from the effects of reduced barriers and other market-opening measures, especially for services and investments. But there are dark clouds that threaten this deal, whether in 2014 or later.

The long-delayed fast-track bill was introduced in both the Senate and House of Representatives on Thursday, but indications are that its passage will be held up by partisan wrangling, hostage to the toxic political atmosphere in Washington.

With the spectre of the failed WTO Doha Round hovering in the background, the TPP agenda is unfortunately over-layered with extreme complexity. As well, many of the twelve participating countries have deeply entrenched and diametrically opposed positions, all of which is frustrating consensus.

Second, the talks are over-weighted by the dominance of the United States, which has a highly aggressive agenda of its own. This doesn’t set the stage for the normal give-and-take and consensus building in trade talks.

Losers lose doesn’t apply – only public opinion matters to Obama’s perceived legitimacy and that’s already in the tubes – the public also doesn’t give a hoot about the aff

Andrew Loomis 12, Deputy Director of Operations Team 3 at U.S. Department of State – Bureau of Conflict and Stabilization Operations, “Legitimacy Norms as Change Agents: Examining the Role of the Public Voice”, in *Legality and Legitimacy in Global Affairs*, edited by Richard Falk, googlebooks

During the summer months of 2006, public disenchantment and political agitation stirred in the American polity. In June, 33% of the public approved of President Bush, a drop in 17 points from the previous year. Just 23% approved of the Republican-majority Congress. Seventy percent of voters indicated they thought the country was on the "wrong track."25 These numbers foretold a steady shift away from support for the political party in control, foreboding for Republican candidates heading into the November midterm elections.

Indicating an erosion of perceived legitimacy, acute public disenchantment over the weakness of the economy, corruption charges of prominent Republicans, and mismanagement of the war in Iraq persuaded large numbers of moderate non-ideological voters to defect from their support of Republican candidates.26 This domestic political unrest culminated in the 2006 November midterm elections, in which thirty seats in the House of Representatives and six seats in the Senate changed political parties, shifting control of both chambers to the Democratic Party for the first time since 1994. Eight months later, this trend in public opinion had continued. By July 2007, reflecting a surge in public support, the national Democratic Party had nearly four times the amount of money than the Republican Party. Senator Charles Schumer of New York reflected, "The contributions reflect the broad pendulum in America, which is that things are swinging to the Democratic side."27

The president also faced public approval levels at historic lows in the modern presidency, dropping below 30% in mid-2007.28 At the same time, prominent Republicans in steadily increasing numbers were reevaluating their allegiance to the president’s policy priorities. President Bush failed to persuade sufficient numbers of Republican senators to support his goal of immigration reform. His other three top domestic priorities—partial privation of Social Security, a restructured tax code including additional tax cuts, and additional restraints on litigation—all failed.29 This represents a sharp reversal from opinion levels in 2005 at the outset of the president's second term, when he spoke of the political capital he had earned from the election and was poised to disburse. This decisive shift in political winds, driven by public dissent with the results and the character of US policy, transformed the nature of politics in Washington.

This shift in the public mood stands in contrast with the decidedly conservative tilt the Supreme Court has taken in recent years. While the winds of change blow in one direction, the Court's decisions in the 2006-2007 term are qualitatively more conservative than the previous term, largely the result of the appointments by President Bush of Justices Samuel Alito and John Roberts. President Bush's reelection and political empowerment to nominate and have confirmed two conservative justices occurred at a time when conservatism was in the ascendancy rather than in retreat, as now appears to be the case. In the closing weeks of the 2006-2007 term, the Court issued four 5-4 decisions on school integration, abortion rights, campaign finance, and pay discrimination by employers, all of which reflect a strikingly more conservative Court than the one vacated by Justice Sandra Day 0'Connerin20o6. A July 2007 poll found that 31% of the public believe the Supreme Court is too conservative, compared to 19% who felt that way in July 2005.30

This US domestic example illustrates how shifts in public opinion can be out of phase with the lethargy of the law and its institutions, and how the public push for change can be impeded by the recalcitrant legal structure. The same dynamic resisted abrupt political change when President Franklin Roosevelt battled with the Supreme Court under conservative Chief Justice Charles Hughes over New Deal programs, and when Richard Nixon struggled with a liberal Warren Burger Court and President Clinton contended with a conservative William Rehnquist Court. While cycles of history may be driven by ideologies of expansion and retrenchment, the court obstructs short-term change fueled by the public will.31 A substantial body of academic research finds that domestic courts indeed are a poor instrument to transform society. In his work on the US courts and social change, for example, Gerald Rosenberg presents evidence that the limited nature of constitutional rights, the lack of judicial independence, and the lack of power to implement policies all conspire to relegate the Supreme Court to a secondary role relative to the public will in transforming society.32 On the 1954 decision Brown v. Board of Education, the case most commonly cited as evidence of the transformative role of the Court, Rosenberg writes, "The combination of... growing civil rights pressure from the 1930s, economic changes, the Cold War, population shifts, electoral concerns, the increase in mass communication—created the pressure that led to civil rights. The Court reflected that pressure; it did not create it."33

Thus the stabilizing effects of law both reinforce the order and impede rapid progress. As in other advanced democracies, as volatile shifts in the US public mood tug society in one direction through the institutions of Congress and the executive, the US courts diminish the prospects of radical change. In both the international and domestic contexts, notions of legitimacy and the public will reside at the cutting edge of policy change. Legal structures impede change. Due to the utility of legitimacy considerations in updating legal instruments to meet the challenge of addressing contemporary threats, the increased academic treatment of legitimacy should be welcomed. Yet the public dimension of legitimacy considerations has been sorely neglected. Due to the legacy of public perceptions of legitimacy provoking legal change by constraining policymaking and shaping the environment in which elites operate, the study of legitimacy require a determined focus on the public voice.

The Essence of Public Perception

Despite this essential feature of legitimacy as conformity with societal expectations, legitimacy talk too often commits the fallacy of assuming a finding of "legitimacy" without explicitly identifying who is issuing the legitimacy judgment. As discussed above, legitimacy is a perceptual concept, and acknowledging its subjectivity or intersubjeclivity still demands that a claim ol legitimacy be paired with a claimant for it to have meaning. Christian Reus-Smil refers to this audience as "the social constituency of legitimation," defined as "the actual social grouping in which legitimacy is sought, ordained, or both."34

A declaration that the NATO military intervention in Kosovo was legitimate but the 2003 US invasion of Iraq was illegitimate, for example, rests on the implicit assumption that a certain audience rendered this finding. But what is this assumed audience? Public statements confirm that US administration officials advanced the claim that both interventions were legitimate. Russian and Chinese officials argued that neither was legitimate. How do we resolve the questions of whether the policy was legitimate and how this determination impacts foreign policy behavior? Specifically, where should one look to locate the source of legitimacy claims that has consequences for the trajectory of international politics, in particular its role in driving broad social change?

In short, the constituency that is most poised to initiate change in international politics is the mass public, a constituency that also is underrepresented in the legitimacy literature. The claim that the public plays an assertive role in legitimacy assessments and thus the course of international behavior is premised in part on the observation that the same geopolitical forces that have undermined the state-centric orientation to world politics have opened the space for the public to operate. Power asymmetry, technological revolution, and normative progress have all eroded the ideal form of Westphalian sovereignty. Contrary to the structural rationalist conception of the international environment of billiard balls and blackboxed states, the public has greater capacity to influence policy in the twenty-first century. As one close observer of international trends recently noted, "foreign policy is no longer a rarefied game of elites: public opinion shapes the world within which policy makers operate."35 As a result, the significance of the publics evaluation of a policy's legitimacy correspondingly has increased.

Given the divergent forces pressing upon the executive branch in the construction of foreign policy, policy elites seek broad social acceptability of policy to increase their prospects for success. Public support for executive policies helps build support of the mass public, Congress, as well as administrators in the executive branch. B. Thomas Trout first identified the acceptability sought by executives as "policy legitimacy," writing "the acquisition of legitimacy is acknowledged to be a fundamental requirement of any political regime ... It is the continuing effort to provide the necessary quality of 'oughtness' to a society's presiding political institutions and to their actions."36

Alexander George builds upon the concept of policy legitimacy, suggesting that it serves as an invaluable asset in supplementing a presidents ability to pursue a foreign policy consistent with his preferences. For George, policy legitimacy is constructed on the basis of a policy's feasibility and its desirability.37 George identifies feasibility of a policy as the "cognitive" component, which convincingly relates means to ends and requires demonstrated competency on the part of executive leadership. The desirability ol a policy is the "normative" component, and relates to the degree to which a policy "is consistent with fundamental national values and contributes to their enhancement."38

This distinction between feasibility and desirability in generating legitimacy is important to this discussion of the public voice, since those judging the legitimacy of a given policy will select from criteria according to the respective positions they occupy. This process highlights the differences between the elite and the mass public perceptions of legitimacy. It is logical that policy elites who are responsible for foreign policy success are more likely to conceive of policies that effectively connect means with ends, whereas agents less accountable for policy success are freer to make judgments premised on a policy's consistency with national values. Thus, seeking to measure the independent impact of normative constraints on decision making as distinct from value-neutral utilitarian calculations requires a focus on the public voice, where normative judgments likely are more active. It is reasonable to assume that the mass public is less cognizant than elites of highly sophisticated cause-effect relationships, but more likely to privilege policies perceived to be based on principles that coincide with widely accepted societal values derived from the national experience.

George does not explicitly match the cognitive and normative components exclusively with the elite and public spheres, respectively. He does argue, however, that the requirements for each aspect of policy legitimacy are affected by the "marked differences in level of interest and sophistication" among the actors involved, from the president and top advisors to the broader public. As one moves vertically downward from the policymaking elite to the mass public, "one expects to find a considerable simplification of the set of assertions and beliefs that lend support to the legitimacy of foreign policy."39

The tension between appealing to the mass public and elite in comprising a legitimation strategy is demonstrated by George's discussion of US President Franklin Roosevelt's lashioning of his postwar strategy. Roosevelt blurred a realist approach with an idealist approach in order to successfully balance efficacy with public support. His realist approach included his "four policemen" model, in which the United States, Great Britain, the Soviet Union, and China would coordinate their overwhelming power to keep the peace. Yet given the appearance that this strategy had with spheres of influence or balance of power—a model associated with centuries of European warfare and rejected by an idealist leaning American public—Roosevelt was cautious in publicly advancing his plan. To mollify the idealist strains in American thought, Roosevelt transformed the "four policemen" model into the United Nations Security Council, a deliberative body in which weaker powers would have a voice. Roosevelt also pleaded with Stalin to show restraint so as to avoid enflaming anti-Soviet sentiment in the United States. In the end, Soviet aggression eroded the public's tolerance for peaceful coexistence with the Soviet Union, enabling President Truman to engage in a containment strategy that had the realist characteristics of balance-of-power and spheres-of-influence approaches.40

It is instructive that Roosevelt did not merely pacify the public by espousing idealist rhetoric and pursue a divergent realist strategy consistent with his four policemen model. He adjusted the substance of US postwar strategy so as to conform to elements of the public's perception of a legitimate set of policies of engaging the Soviet Union and war-torn Europe.

The essential point raised by this differentiation between spheres in establishing policy legitimacy is that separate criteria exist for elite and mass public legitimation. Much of the public opinion literature argues that the public is ill-equipped to make sophisticated judgments on the efficacy of competing foreign policy approaches (the cognitive criterion). Yet while the public may lack the tools and information necessary to judge the feasibility of a set of strategies in achieving policy objectives, it does make judgments on the desirability of policy, a judgment that carries weight in the policymaking process.

Identification of the policy elites' cognitive criterion and publics normative criterion returns this analysis to the legality-legitimacy distinction. Policymakers access different standards in constructing, rationalizing, or supporting foreign policies than the broader public. Legal norms are an important justification of policy elites, in part due to the substantial contribution that legal conduct makes to functional reciprocity.

The public is not charged with guaranteeing national security, less equipped to construct or comprehend nuanced goal-oriented policy prescriptions, and less captive to the cognitive requirements of effective ends-means combinations. The wider public is more sensitive to sweeping conceptions of the national character and more persuaded by moral and societal standards of legitimacy, thus more insistent on their incorporation into a state's foreign policy.

This difference in legitimation standards also is a source of friction between elite policymaking and the public will that contains the mechanism of change. The dissonance that exists between the cognitive and normative components of legitimacy—and between the judgments of the policy elite and the public—require elites to reevaluate policy formulations in the search for political support. ReusSmit suggests, "It is this disjuncture between its social constituency of legitimation and its chosen realm of political action that underlies the administrations current international crisis of legitimacy."41

Won’t pass and Obama’s not spending capital

Phil Levy, Foreign Policy, 1/29/14, Is Obama even trying on trade, shadow.foreignpolicy.com/posts/2014/01/29/is\_obama\_even\_trying\_on\_trade

The president faces an enormous challenge on trade. He has built much of his Asian foreign policy around the Trans-Pacific Partnership (TPP) and much of his European foreign policy around the Transatlantic Trade and Investment Partnership (TTIP). In each case, he did so on the promise to our international partners -- explicit or implicit -- that he would sooner or later bring Congress around.

It is now later. The TPP was nominally to conclude last year. Other countries' trade ministers have stated their desire to see it wrap up as soon as possible. They are waiting on White House efforts to win a negotiating mandate from Congress (known as TPA). While such a measure has met some Republican opposition, the most serious challenge has come from Democrats, particularly in the House. The Senate looked safer, at least before the president sent the bill's key Democratic backer, Finance Committee Chairman Max Baucus (D-MT), off to Beijing.

In the House, members of the president's party have voiced skepticism about what trade deals do. They believe those deals cost jobs, damage the environment, and harm workers. A key part of the president's task in his State of the Union address was to speak to these members of his party and their constituents watching at home. He had to persuade them that, while he had once espoused such positions and empathized, the critics were mistaken. Instead, here was the sum total of the president's pitch:

"...when 98 percent of our exporters are small businesses, new trade partnerships with Europe and the Asia-Pacific will help them create even more jobs. We need to work together on tools like bipartisan trade promotion authority to protect our workers, protect our environment and open new markets to new goods stamped 'Made in the USA.'"

Even had the president made this statement at the beginning of last summer, when discussions were just starting up on the TPA, it would have been cursory. Few people are persuaded by the bare assertion that their strong beliefs are false and the opposite is true. Usually, to change minds, some supporting detail is required, some evidence, or a carefully structured argument. Weak mercantilist claims are easily rejected by skeptics (e.g. if trade is good because exports bring jobs, what does it mean when we run a trade deficit and imports exceed exports?).

Not only did the president fail to make much of a sales pitch, but his vague call to ‘work together' comes at a time when a bipartisan bill has been crafted and the battle lines are drawn. By not mentioning the bill, nor taking a stance on the controversial facets under debate -- currency provisions, intellectual property protection clauses, trade adjustment assistance -- the White House remains on the sidelines, hoping that TPA will simply fall into its lap without much expenditure of effort or political capital.

Success on the trade front was going to require experienced leadership in the Congress and a concerted public and private persuasion campaign from the President. Instead, the last month has brought the removal of an irreplaceable Capitol Hill proponent and noncommittal nods from the White House. This does not bode well.

Reid blocks

James Polti, Financial Times, 1/30/14, Top Democrat puts Obama trade deals in doubt, www.ft.com/intl/cms/s/0/bf61f75a-88a1-11e3-bb5f-00144feab7de.html#axzz2sT74OPia

President Barack Obama’s push to strike trade deals with the European Union and 11 Pacific Rim nations was put in jeopardy after the top Democrat in Congress quashed the idea of giving the White House congressional approval to negotiate the pacts. Harry Reid, the Senate majority leader, said he opposed legislation known as Trade Promotion Authority, which sets a swift timeline for trade bills and prevents amendments that would slow them down or modify their contents. “I’m against fast track,” Mr Reid told reporters, less than a day after Mr Obama had called for TPA in his State of the Union speech. “Everyone would be well advised just to not push this right now, ”he added. Mr Reid has often been sceptical of trade deals, and is wary of their potential to divide his party in a year of midterm congressional elections during which his control of the Senate is at risk. “Leader Reid has always been clear on his position on this particular issue,” a White House official said, dismissing the significance of Mr Reid’s comments. Others, however, saw his intervention as a defiant rebuff to the president that threatens to chill hopes of making progress this year on the biggest global negotiations to liberalise international trade. “Harry Reid’s decision to block these deals cripples America’s historic role as the global leader in advancing free trade, and it is a personal embarrassment to the president,” said Tony Fratto, a former US Treasury and White House official under George W Bush, and a partner at Hamilton Place Strategies, a consultancy. Mr Obama’s words on trade in Tuesday night’s address to Congress were cautious, reflecting doubts that he has built enough political support for his expansive second-term agenda of trade liberalisation. Mr Obama said the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership would help generate employment among small businesses seeking to export around the world. “We need to work together on tools like bipartisan Trade Promotion Authority to protect our workers, protect our environment, and open new markets to new goods stamped ‘Made in the USA’,” he said. But Republicans said this was far from the more heavy-handed public and private White House campaign that was needed to win over sceptical Democrats. Orrin Hatch of Utah, the top Republican on the Senate finance committee and an architect of a bipartisan TPA bill introduced this month, said he was “extremely disappointed” by the administration’s efforts and message. “The president barely mentioned his trade agenda. He certainly didn’t call on members of his own party to set aside their differences and support renewing TPA,” Mr Hatch said. “This administration needs to do better,” he told an audience at the US Chamber of Commerce on Wednesday. Securing a TPA bill has been an uphill struggle for the administration since last year, and its prospects looked bleaker after Mr Reid’s comments. A spokesman for the Senate finance committee said Max Baucus, the Democratic committee chairman who brokered the TPA compromise with Mr Hatch this month, would “continue to push forward on efforts to secure TPA”. But it is highly unlikely the existing compromise can be voted on in the Senate finance committee any time soon. Moreover, Mr Baucus will start as US ambassador to Beijing as early as next month, removing him from the picture. He will be replaced at the helm of the committee by Ron Wyden of Oregon, who has also signalled that the TPA legislation is not acceptable as written. His wish to renegotiate some of the bill’s terms clouds its fate. “My bottom line is that America needs a better TPA framework so our people can benefit from better trade agreements. These agreements must expand the winner’s circle, so that it includes more Americans with good-paying jobs,“ Mr Wyden said in a statement late on Wednesday. “Global commerce has changed dramatically since the last time TPA was authorised and Senators are telling me they want the chance to examine those changes and have an opportunity to weigh in on a variety of issues,” he added. America’s trading partners are tracking the fate of TPA with increasing anxiety. European officials were reserving judgment on Wednesday about Mr Obama’s speech and how it might affect transatlantic trade talks. But they said it was clear that, mindful of political difficulties, the White House had decided not to use the speech to press its case for TPA forcefully. “There is no sense of urgency,” one European official told the FT. But “we’d love him to push hard on trade/TPA. That will keep the momentum, also on this side of the pond.”

Congressional conditions mean we can’t negotiate trade deals

Herman 14

Lawrence L. Herman, Herman & Associates, Toronto, is a senior fellow at the C.D. Howe Institute and former counsel at Cassels Brock & Blackwell LLP, Financial Post, January 10, 2014, "Darkening clouds threaten Trans-Pacific Partnership deal", http://opinion.financialpost.com/2014/01/10/darkening-clouds-threaten-trans-pacific-partnership-deal/

The long-delayed fast-track bill was introduced in both the Senate and House of Representatives on Thursday, but indications are that its passage will be held up by partisan wrangling, hostage to the toxic political atmosphere in Washington.

With the spectre of the failed WTO Doha Round hovering in the background, the TPP agenda is unfortunately over-layered with extreme complexity. As well, many of the twelve participating countries have deeply entrenched and diametrically opposed positions, all of which is frustrating consensus.

Second, the talks are over-weighted by the dominance of the United States, which has a highly aggressive agenda of its own. This doesn’t set the stage for the normal give-and-take and consensus building in trade talks.

Another problem, at least up to now, has been the lack of President Obama’s trade negotiating authority – which must be bestowed by the Congress.

Officially called Trade Promotion Authority or TPA (but more often called “fast-track”), negotiating authority is absolutely critical for the American team. Fast-track authorizes Obama to conclude a deal but prevents the Congress from later demanding that provisions be re-negotiated as a price for its approval. Under fast-track, the only thing the Congress can do is accept the deal as signed or reject it entirely.

Without fast-track authority, there’s no guaranty that any Trans-Pacific deal struck with the Americans will get the necessary Congressional approval. No country would be foolish enough to sign off on any agreement with the U.S. in the absence of the fast-track guaranty.

The fast-track bill was introduced on Thursday, but passage is far from certain.

It’s unusual that the TPP negotiations have proceeded thus far without the American team having fast-track authority. Other TPP countries have been negotiating basically on faith, assuming that fast-track will one day be forthcoming.

An unfortunate development is that the chair of the critical Senate Finance Committee, Max Baucus of Montana, has been designated by President Obama as the next U.S. ambassador to China. With Baucus’ impending departure, a major force in channelling fast track through the Congress will be gone, causing uncertainties over the ultimate fate of the legislation.

There’s another problem. While fast-track will give the US executive its negotiating mandate, the price for getting the bill through Washington’s byzantine legislative maze will be the tacking on of many conditions. For example, even now, the bills refer to “currency manipulation” as one requirement for Congressional approval of a TPP deal. Other conditions will be added on as the bills proceed through Congress.

Congress’ clamp on the U.S. negotiating position adds to concern about whether a final trans-Pacific deal can be successfully pulled off

PC theory is no longer true

Ryan Lizza, The New Yorker's Washington correspondent, 1/30 [Obama Breaks Up with Congress,” http://www.newyorker.com/online/blogs/comment/2014/01/the-state-of-the-union-or-obama-breaks-up-with-congress.html]

Several generations of political leaders and journalists have been taught to believe that, in the words of the political scientist Richard Neustadt, “Presidential power is the power to persuade.” Presidents always come into office believing that, with bargaining, cajoling, and pure reason, they can bring members of Congress around to the idea that passing the White House’s agenda is in their interest. Obama believed this in his bones; his 2008 campaign was premised on it.¶ But modern political scientists have abandoned some of Neustadt’s core claims. They’ve settled on a far less exciting analysis, which casts the President as a more passive victim of circumstance who can do little to move Congress unless he already has a majority of votes. Instead of emphasizing the potential of great Presidential leadership and heroic abilities of persuasion, this more structural view emphasizes the limits of a system in which Congress and the President—despite the way it looked on TV on Tuesday night—are co-equal branches of government. Congress contains land mines that the White House has almost no ability to defuse: the extreme polarization of the House, based on a geographic sorting of the public; the rural-state tilt in the Senate that gives Republicans an advantage; the filibuster, and more.¶ It has taken Obama years to transform from a Neustadtian into a structuralist, but Tuesday night marked the completion of the cycle. That metamorphosis has forced the White House to think hard about how Obama can effect change on his own, and it’s one reason that the President recently asked John Podesta to come aboard. (Podesta, who has long advised the White House to use more executive authority, watched the speech with other top Obama aides from the back of the chamber. He seemed pleased.)¶ It’s prudent to be skeptical when listening to the White House’s new claims about what it can accomplish without Congress. After all, if Presidents could solve America’s biggest problems on their own, they would. But every modern President pushes the boundaries of executive authority, and Obama laid out some creative ideas last night that are not just token reforms. For instance, his climate-change policies—which rely on E.P.A. regulations—can be implemented with no input whatsoever from Congress, though of course Congress can try to undo them. Obama also hinted that he may use his pen to preserve more wilderness and other sensitive lands, an environmental tool that Bill Clinton often used, but which Obama has not. His push to encourage businesses and states to raise the minimum wage and his own executive order to raise the minimum wage for future federal contractors are not trivial. He has wide latitude to reform the practices of the N.S.A.¶ But many of the other actions that he outlined will have limited impact. The White House can’t implement gun control by fiat, and it can’t fix the tax code or repair the immigration system on its own. Obama’s new realism is necessary and appropriate, but at some point this year he will need to rekindle his relationship with Congress.

Obama losing on executive authority now

Ginger Gibson, Politico, 1/29/14, Republicans bash Obama for overstepping bounds, dyn.politico.com/printstory.cfm?uuid=B6D21B66-98C7-4059-B77D-8CFB4009563F

In his State of the Union address Tuesday night, President Barack Obama said if Congress won’t help him get things done, he’ll do it on his own — and congressional Republicans aren’t pleased. Many in the GOP said they don’t intend to sit quietly if Obama starts signing executive orders. Sen. Marco Rubio (R-Fla.) had sharp criticism for the president’s expanded authority. “I think it’s unfortunate, I think it’s divisive and quite frankly, borderline unconstitutional on many of those issues,” Rubio said. “I understand the [legislative] process takes long and can be frustrating, but I think it truly undermines the republic.” Rep. Tim Huelskamp (R-Kan.) said the president requested more controversial pieces of legislation — like immigration reform — than he did when Democrats controlled both chambers of Congress. “Suddenly he wants things that Republicans won’t give him that he didn’t ask Democrats to do — it seems like a lot of theatrics,” Huelskamp said. Huelskamp said he joked with fellow members that he’s going to file legislation that doesn’t require a presidential signature. The Kansas conservative said there are ways Republicans could push back at Obama’s executive orders but that he doesn’t think the GOP leadership is willing to wage the fight. “There are things we can do — I’m just afraid leadership is not willing to challenge them,” he said. Sen. Lindsey Graham (R-S.C.) argued that Obama employing executive powers could harm the Democrats as a whole. “I think he’s going to create a narrative for himself that’s going to hurt Democrats by acting unilaterally,” Graham said. “I think he’s going to create an impression among the American people that he’s abusing the power of his office and that will hurt Democrats.” Rep. Tom Cole (R-Okla.) took a soft approach to criticizing the president for overstepping his bounds on executive orders. “We’ll wait and see what he does,” Cole said. “The president has certain executive powers, but if he wants to achieve anything, an executive order is not a very good way to do it. Usually legislative achievement is what is enduring achievement. Executive orders are like writing on the beach, it may last a while but when the tide comes in or goes out, it disappears. So I think it’s a poor way to govern.” Sen. Tim Scott (R-S.C.) said acting without congressional authority is problematic. “We continue to erode the whole notion of the rule of law,” Scott said. “To the extent that he continues to move unilaterally without the consent of Congress, I think it doesn’t sit well with a message of unity.”

NSA fights now

Feaver 1/17/14

Peter, Foreign Policy, “Obama Finally Joins the Debate He Called For,” http://shadow.foreignpolicy.com/posts/2014/01/17/obama\_finally\_joins\_the\_debate\_he\_called\_for

Today President Barack Obama finally **joins the national debate he called for** a long time ago but then abandoned: the debate about how best to balance national security and civil liberty. As I outlined in NPR's scene-setter this morning, this debate is a **tricky** one for a president who wants to lead from behind. The public's view shifts markedly in response to perceptions of the threat, so a political leader who is only following the public mood will **crisscross himself repeatedly**. Changing one's mind and shifting the policy is not inherently a bad thing to do. There is no absolute and timeless right answer, because this is about trading off different risks. The risk profile itself shifts in response to our actions. When security is improving and the terrorist threat is receding, one set of trade-offs is appropriate. When security is worsening and the terrorist threat is worsening, another might be. It is likely, however, that the optimal answer is not the one advocated by the most fringe position. A National Security Agency (NSA) hobbled to the point that some on the far left (and, it must be conceded, the libertarian right) are demanding would be a mistake that the country would regret every bit as much as we would regret an NSA without any checks or balances or constraints. Getting this right will require **inspired and active political leadership.** **To date**, Obama has preferred to stay far removed from the debate swirling around the Snowden leaks. This president relishes opportunities to spend **political capital** on behalf of policies that disturb Republicans, but, as former Defense Secretary Robert Gates's memoir details, Obama **has** been very reluctant to expend **political capital** on behalf of national security policies that disturb his base. Today Obama is finally engaging. It will be interesting to see how he threads the political needle and, just as importantly, how much political capital he is willing to spend in the months ahead to defend his policies.

## morrocco

IHRL collapse legitimizes Moroccan colonization --- destabilizes North Africa and causes WW3

Epstein 9 (Pamela, LLM – Golden Gate University, JD – University of La Verne, “BEHIND CLOSED DOORS: "AUTONOMOUS COLONIZATION" IN POST UNITED NATIONS ERA-THE CASE FOR WESTERN SAHARA” Spring, 2009, 15 Ann. Surv. Int'l & Comp. L. 107)

In dealing with the case of Western Sahara, the U.N. has allowed itself to be a geopolitical pawn in the maneuverings of two minor regional powers: Morocco and Algeria. "Every State has the duty to refrain from organizing, instigating assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territorial directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force." n177 Member states are under a duty to bring about a speedy end to [\*136] colonialism, including due regard for the freely expressed will of the peoples concerned. n178 States' attitudes toward self-determination shift and change depending on the impact it could have on a State's self-interested agenda. Under the U.N.'s Friendly Relations Declaration, "strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another since the practice of any form of intervention not only violates the spirit and letter of the Charter, **but also leads to the creation of situations which threaten international peace and security**." n179

As two of the five permanent members with vetoing power of the U.N. Security Council, France and the U.S. have blocked the Council from enforcing its resolutions in regard to Western Sahara. n180 Both countries have perceived a historical need to strengthen the Moroccan monarchy as a barrier against Communism and radical Arab nationalism during the Cold War. n181 More recently, Morocco has served as an important ally in the battle against Islamic extremism. n182 The U.N. has been an abysmal failure in regard to Western Sahara. The resolution should have been tailor-made for the U.N. - hold a referendum to allow the people of Western Sahara to decide whether to be free or integrate with Morocco. Yet, after the cease-fire, and MINURSO with a staggering operational budget of six hundred million dollars, the referendum has gone nowhere. n183 It is an ironclad stalemate. Moreover, the referendum process as whole has been met with gross irregularities and improprieties. The chief setback relates to the misuse of administrative control, on paper this task is assigned to MINURSO, on the ground a different story emerges, the referendum or lack thereof has been strictly controlled by the Moroccan government. n184

**The U.S. has not made any attempt to distinguish itself by setting a higher standard**. From the beginning U.S. power politics affected its duty under international customary law. U.N. Ambassador Daniel [\*137] Moynihan recounted his job during the Cold War years, as a duty to oppose an independent state for the Saharawi's. n185 "No new Angola on the west coast of Africa n186 was his instruction from then Secretary of State Henry Kissinger. According to declassified White House documents, Kissinger is cited as saying in reference to Morocco's unsanctioned and illegal entry into the Western Sahara during the 1975 "Green March," "if we had prevented it we would have destroyed our relationship with Morocco." n187 The U.S. has proven by its actions, they are not abiding by the principles enumerated within the Friendly Relations Declaration cited above. Despite the termination of the Cold War, the U.S. still refuses to use its favored relationship with Morocco or its position as a vetoing member on the Security Council to ensure Sahrawi people are provided the right of self-determination, one of the most important and basic human rights the U.N. was created to protect. This U.S.'s behavior is in starch contradiction to its origins as a colony breaking away from its colonial master, England, in its inalienable right to freedom through self-determination.

As indicated above, both the U.S. and France have attempted to utilize their close relationship with Morocco to exploit Western Sahara for its resources: oil and fish stocks. France, as a vetoing member on the U.N. Security Council, has close political ties to Morocco as its foremost trading partner and provider of developmental aid. France's close relationship to Morocco has led France in successfully preventing condemnation by the Security Council of the human right violations committed by Morocco. n188 Their relationship has additionally prevented the expansion of the MINURSO mandate to include human rights monitoring in the occupied territories, thereby forcing MINURSO to stand idly by as a silent witness to the continuing human rights violations. n189

Furthermore, Spain unlike its neighbor Portugal, who played a leadership role in supporting the liberation of East Timor from Indonesian [\*138] occupation as the former colonial power has played no such role and, in fact, has done quite the opposite. Spain has placed a higher value on maintaining good neighborly relations with Morocco. A strong motivator behind the controversial 2006 fishing agreement, previously mentioned, between the European Union and Morocco was the advancement of friendly relations and monetary gain. From these incidents alone it is enough to conclude that the duties and responsibilities of member states of the U.N., the principles and norms of international customary law, and the right to self-determination have taken a back seat to power politics and nation-state self-interest.

PART FIVE: MOROCCO'S 2007 PLAN AND FUTURE CONSEQUENCES

A.Morocco's 2007 Plan

"The Moroccan autonomy plan aims at legitimatizing the occupation..." n190 Falling well below what is required to bring about a peaceful resolution to the conflict is Morocco's 2007 Autonomy Plan supported by the U.S. and France was cited as "serious and credible" and a "constructive contribution to finding a solution to the conflict." n191 **Irreparable damage will occur if the proposal is implemented, as it stands the plan would** categorically alter the foundation **of the** post-World War II international legal system. **The autonomy plan**, which **re-legitimizes colonization through military occupation**, is premised on the notion that Western Sahara is part of Morocco-a view strongly contested by the U.N. Charter, the ICJ, the African Union, and various other international sources. Acceptance of the autonomy plan would be the first time since the founding of the U.N. and the ratification of its Charter more than sixty years ago, the international community would be endorsing the expansion of a country's territory by military force, resulting in a dangerous and destabilizing precedent. n192

Further complicating the situation is the lack of an enforcement mechanism provided in the proposal, and Morocco has a history of breaking its promises to the international community in regards to the U.N.-mandated referendum for the Western Sahara. n193 Upon closer [\*139] inspection, the proposal is offering limited autonomy at best, particularly in regards to natural resources and law enforcement beyond local matters. n194 According to Article 19 of Morocco's constitution, the Sultan (King) of Morocco is ultimately vested with absolute authority and, therefore, the autonomy proposal insist Moroccan "keep its powers in the royal domains, especially with respect to defense, external relations and the constitutional and religious prerogatives of His Majesty the King." n195 Unmistakably giving the monarch considerable leeway in interpretation of the plan and control over its autonomous "colony" Western Sahara.

B.Consequences of not granting full independence

Further aggravation and acceleration of human rights violations, **the** **destabilization of an already unstable region with** global implications, as well as setting a bad legal precedent as described above is just the tip of the iceberg if self-determination of Western Sahara is not advanced. It is time to heed the lessons from the past which clearly demonstrate that any solution against or ignoring the right of self-determination and reinstitution of colonization is not built for longevity. The tragic and bloodstained universal truth is that **not granting a people's right to self-determination is a** major cause of wars **and revolutions**. n196 Historically, centralized autocratic governments seldom ever respect the autonomy of regional jurisdictions, **which classically lead to violent conflict and genocides**. n197 For example, in 1952 the U.N. granted the British protectorate and former Italian colony of Eritrea autonomous status federated with Ethiopia. n198 Ethiopia's emperor in 1961 revoked Eritrea's [\*140] autonomous status, annexing it as his empires new province. n199 The result was a thirty-nine year battle marked by death and violence. n200

Western Sahara is a clear cut case of self-determination for a people struggling against foreign military occupation. The Polisario Front has already offered guarantees to protect Moroccan strategic and economic interest if allowed full independence. To insist that the people of Western Sahara give up their moral and legal right to a genuine and free referendum, is not a formula for conflict resolution, but rather a recipe for a far more serious conflict in the future. Now is the "most opportune time to break the cycle of compromise and accommodation, of realpolitik and to adopt a no-nonsense attitude to the issue." n201

CONCLUSION: AN ARGUMENT FOR CHAPTER 7 USE OF FORCE

The subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security, convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality. n202

Any attempt aimed at the partial or total disruption other than national unity and territorial integrity of a State or country or in regard to political independence is incompatible with the purposes and principles of the U.N. Charter. n203 [\*141]

Every state has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes. n204 Every Member State, including Morocco, has a duty to refrain from any forcible action which deprives other peoples' rights of equality and self-determination synonymous with their freedom and independence. n205 Furthermore, as members of the U.N., each state is obligated to promote the realization of self-determination and to respect that right in accordance with the provisions of the U.N. Charter. n206 All obligations that deal with preemptory and customary law, such as the right to self-determination, are applied erga omnes in relation to all-not just between parties. n207 All states must then do what is in their power to make the parties respect their obligations. In light of the articles on state responsibility, individual states have a "duty of non-recognition" of gross violations of international law. The lack of political will and nation-state self-interest has corrupted the foundational Charter of the U.N. and made it possible for Morocco to continue denying the Sahrawi's their right to self-determination.

The U.N. Security Council's involvement in using force to implement the referendum and its outcome is restricted to its powers of collective security found in Chapter 7 of the U.N. Charter. n208 In order to call upon this power, the Council must first satisfy Article 39, indentifying either a salient threat to the peace, a breach of the peace or an act of aggression. n209 A mounting salient threat has been established-by occupying Western Sahara and blocking the referendum from allowing any choice of independence, Morocco actions are identical to the role of a colonial power. Morocco has also violated international law by invading Western Sahara by force in the 1975 "Green March." This one action translates to a cognizable breach of international peace and security, violating the U.N. Charter invoking Chapter 7 Security Council powers. n210 To further support the "Green March" as an act of aggressive [\*142] force on the part of Morocco, Special Rapporteur Cristescu states, "The use of force against another State may take various forms: for instance, actions conducted by regular or irregular forces; by forces of volunteers or by armed bands; acts of reprisal; invasion; or pressure or coercion of various kinds." n211

In U.N. resolution 1783, n212 which again extended the mandate of MINURSO, the U.N. Secretary General noted there was a conspicuous increase in violence in Western Sahara not seen in years past. n213 The U.N. has been denied access to Morocco's military installations within the occupied territory of Western Sahara. n214 This lack of access traditionally has been associated with rising tensions as a precursor to violence. n215 The Security Council has previously utilized its Chapter 7 powers to terminate conflicts which are not forthcoming and where the situation is classified as threat to international peace and security. n216 For example, the case of Iraqi occupation of Kuwait in 1990 when the Security Council invoked Chapter 7 and went to the military defense of Kuwait. Since 1990, over 1000 resolutions have been adopted by the Security Council in accordance with Chapter 7. However, the Security Council is unwilling to do the same for Western Sahara. Ultimately, unless war breaks out, no international actor in the current situation seems able, or willing to initiate a lasting resolution to the conflict. **Another outbreak of war is not implausible. In fact, it is highly probable, carrying with it the ability to** further destabilize the Northern Africa region **and involves the U.S., France, and other countries providing the potential for** a world war scenario**.**

## cbw

LOAC key to norm against CBW use

Mardini 13

Robert Mardini, head of operations for the Near and Middle East, ICRC, July 18, 2013, "Chemical weapons: An absolute prohibition under international humanitarian law", http://www.icrc.org/eng/resources/documents/interview/2013/07-18-syria-chemical-weapons.htm

Why are chemical and biological weapons banned?

The use of weapons that poison, or that spread disease, has been considered unacceptable for centuries, as we know from ancient codes of warfare. But it was public abhorrence of chemical warfare in the First World War that led to a specific international ban on the use of chemical and biological weapons in 1925. States further strengthened this prohibition with agreement of the Biological Weapons Convention in 1972 and the Chemical Weapons Convention in 1993. We must work to ensure that chemical and biological weapons are completely eliminated, that they are not used again, and that they are never reacquired. The prohibitions on the use of these weapons are now part of customary international humanitarian law, which means they apply to all parties to all armed conflicts even if they have not joined the treaties.

What can be done if chemical weapons are used?

The ability to help victims of chemical weapons depends on the particular circumstances, including the scale of the attack and the types of weapons used. Because there does not currently appear to be an effective international humanitarian capacity available to respond to a large-scale use of chemical weapons, any assistance operation would involve major challenges. The ICRC has developed contingency plans that would enable it to continue certain limited activities in the event of small-scale use of chemical weapons without jeopardizing the health and safety of its staff.

Clearly, the most effective way of avoiding this situation would be for all parties to uphold international humanitarian law, which absolutely bans the use of chemical weapons. We continue to address issues such as the threat of chemical weapons in our regular dialogue with conflict parties with a view to preventing violations of the law.

Extinction

Myhrvold 13 (Nathan Myhrvold is chief executive and founder of Intellectual Ventures and a former chief technology officer at Microsoft, 9/23/2013, "Prepare for Strategic Terrorism", triblive.com/opinion/featuredcommentary/4754772-74/strategic-weapons-attack#axzz2hTSgyTyu)

For the first time in human history, the curve of lethality and cost has been turned on its head. Biological weapons can be incredibly dangerous, but they can also be cheap to produce and deploy. Another path to cheap lethality is simple theft: A terror group could steal a nuclear bomb. A small group can now execute a strategic terror attack that could kill millions of people.

An attack of that magnitude differs in a fundamental way from the typical, tactical-level suicide bombings. The body count and total harm from tactical terrorism is limited. In contrast, a single nuclear or bio-terror attack could kill more people than all previous terrorist attacks put together.

Our defense establishment was shaped to address what was, for a long time, the only strategic threat our nation faced: Soviet or Chinese missiles. So far, strategic terrorism has received relatively little attention in defense agencies, and the efforts that have been launched to combat this existential threat seem fragmented.

That's a natural human reaction — nothing like this has happened yet, so it is hard for people to take it seriously. That is exactly the sort of complacency that preceded Sept. 11, Pearl Harbor and other great defense disasters.

History suggests that the only thing that shakes the United States out of complacency is a direct threat from a determined adversary that confronts us with our shortcomings by repeatedly attacking us or hectoring us for decades. The Cold War is an excellent example; the defense establishment we built in response largely worked and nuclear war was avoided.

Unfortunately, current and future foes are unlikely to follow this playbook. Instead, they wait patiently between attacks. For now, they are satisfied with tactical terrorism, but at some point they will have the means, opportunity and motive to turn to strategic terror weapons.

The most likely scenario is that the United States will continue to lumber along. Terrorists will launch their next attack. With luck, we will detect it in time to prevent a major disaster, but it's possible that a strategic terror attack in the next decade or so will kill 100,000 to 1 million Americans. Surely, we then will get serious about strategic terrorism.

# 1AR

## AT: Arctic Conflict

**No accidental launch**

**Williscroft 10** (Six patrols on the *John Marshall* as a Sonar Technician, and four on the *Von Steuben* as an officer – a total of twenty-two submerged months. Navigator and Ops Officer on *Ortolan* & *Pigeon* – Submarine Rescue & Saturation Diving ships. Watch and Diving Officer on *Oceanographer* and *Surveyor*. “Accidental Nuclear War” http://www.argee.net/Thrawn%20Rickle/Thrawn%20Rickle%2032.htm)

Is there a realistic chance that we could have a nuclear war by accident? Could a ballistic submarine commander launch his missiles without specific presidential authorization? Could a few men conspire and successfully bypass built-in safety systems to launch nuclear weapons? The key word here is “realistic.” In the strictest sense, yes, these things are possible. But are they realistically possible? This question can best be answered by examining two interrelated questions. Is there a way to launch a nuclear weapon by accident? Can a specific accidental series of events take place—no matter how remote—that will result in the inevitable launch or detonation of a nuclear weapon? Can one individual working by himself or several individuals working in collusion bring about the deliberate launch or detonation of a nuclear weapon? We are protected from accidental launching of nuclear weapons by mechanical safeguards, and by carefully structured and controlled mandatory procedures that are always employed when working around nuclear weapons. Launching a nuclear weapon takes the specific simultaneous action of several designated individuals. System designers ensured that conditions necessary for a launch could not happen accidentally. For example, to launch a missile from a ballistic missile submarine, two individuals must insert keys into separate slots on separate decks within a few seconds of each other. Barring this, the system cannot physically launch a missile. There are additional safeguards built into the system that control computer hardware and software, and personnel controls that we will discuss later, but—in the final analysis—without the keys inserted as described, there can be no launch—it’s not physically possible. Because the time window for key insertion is less than that required for one individual to accomplish, it is physically impossible for a missile to be launched accidentally by one individual. Any launch must be deliberate. One can postulate a scenario wherein a technician bypasses these safeguards in order to effect a launch by himself. Technically, this is possible, but such a launch would be deliberate, not accidental. We will examine measures designed to prevent this in a later column. Maintenance procedures on nuclear weapons are very tightly controlled. In effect always is the “two-man rule.” This rule prohibits any individual from accessing nuclear weapons or their launch vehicles alone. Aside from obvious qualification requirements, two individuals must be present. No matter how familiar the two technicians may be with a specific system, each step in a maintenance procedure is first read by one technician, repeated by the second, acknowledged by the first (or corrected, if necessary), performed by the second, examined by the first, checked off by the first, and acknowledged by the second. This makes maintenance slow, but absolutely assures that no errors happen. Exactly the same procedure is followed every time an access cover is removed, a screw is turned, a weapon is moved, or a controlling publication is updated. Nothing, absolutely nothing is done without following the written guides exactly, always under two-man control. This even applies to guards. Where nuclear weapons are concerned, a minimum of two guards—always fully in sight of each other—stand duty. There is no realistic scenario wherein a nuclear missile can be accidentally launched...ever...under any circumstances...period!

## TPA

## AT: Economy

No impact to economic decline – prefer new data

Daniel Drezner 14, IR prof at Tufts, The System Worked: Global Economic Governance during the Great Recession, World Politics, Volume 66. Number 1, January 2014, pp. 123-164

The final significant outcome addresses a dog that hasn't barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.42 They voiced genuine concern that the global economic downturn would lead to an increase in conflict—whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fueled impressions of a surge in global public disorder. The aggregate data suggest otherwise, however. The Institute for Economics and Peace has concluded that "the average level of peacefulness in 2012 is approximately the same as it was in 2007."43 Interstate violence in particular has declined since the start of the financial crisis, as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict, as Lotta Themner and Peter Wallensteen conclude: "[T]he pattern is one of relative stability when we consider the trend for the past five years."44 The secular decline in violence that started with the end of the Cold War has not been reversed. Rogers Brubaker observes that "the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected."43

## AT: China – US War

#### No risk of China War – mutual cooperation

**Friedberg 2005**, Professor of Politics and International Affairs at Princeton University, Deputy Assistant for National Security Affairs and Director of Policy Planning in the Office of the Vice President, International Security, Vol. 30, No. 2 (Fall 2005), pp. 7–45

Fortunately, a number of the factors to which the optimists point seem likely to continue to act as a brake on what might otherwise be an unchecked slide toward mounting competition and increasingly open confrontation. Assuming that they persist and grow, the mutual gains from an expanding economic relationship will remain the single most important peace-inducing force at work in U.S.-China relations. The potential costs of a conflict between the two powers, especially given that both possess nuclear weapons, should also help to keep competitive impulses within bounds and to make both sides very wary of embarking on any course that could risk direct conflict. The emergence of a group of Chinese “new thinkers” could also contribute to a less zero-sum, hard realpolitik approach to relations with the United States. As with the Soviet Union during the era of perestroika, so also in this case changes in high-level thinking could have a calming effect on bilateral relations, even if they were not accompanied immediately by more profound and far-reaching domestic political reforms.

## AT: EU

#### EU soft power fails

Dempsey, 11

Judy Dempsey, Int'l Herald Tribune Europe Senior Correspondent, 9/28/11, The Failure of Soft Power, carnegieeurope.eu/publications/?fa=45617

Europeans have long believed soft power to be the best instrument to promote their values and their security. They have a strong sense of moral superiority about it, particularly when looking at hard, or military, power. Military action is something that the Europeans leave to the United States, Britain, and France. Even if it wanted to, the European Union cannot do it. It lacks the basic capabilities, such as heavy airlift and logistics. It lacks an integrated defense policy for armament procurement. It also lacks a security strategy that includes the use of hard power as an option. The soft power instruments Europeans have used over the years consist of development aid and civilian assistance, such as training the police and judiciary in some countries. The Europeans also sometimes couple soft power with trade incentives or with sanctions. Above all, they pride themselves on basing their actions on the defense of human rights which are, at least officially, at the core of Europe’s value system. But Europe’s record in making soft power the cornerstone of its security strategy has been patchy. It has been worked incredibly well in Eastern Europe. Enlargement with its plethora of promises and incentives is soft power at its most powerful. But Europe cannot enlarge to the rest of the world. That is where Europe’s soft power policies have had so little, if any success. Take Iran. Years of negotiations with Iran to get it to abandon its nuclear ambitions have gotten the Europeans nowhere. Promises of technical assistance and closer economic cooperation have had no impact on the regime in Teheran, even though some of the sanctions are biting. The reason why the Europeans have failed is because Iranian President Mahmoud Ahmadinejad is just too stubborn. He seems determined to develop a nuclear military capability for Iran’s own geo-strategic interests no matter what the cost to his people. Soft power can find no grip there. Bosnia-Herzegovina is another case where the instrument has failed. Fifteen years after the Dayton accords that ended the civil war in the former Yugoslavia, Bosnia is mired in corruption and misrule. This is despite the presence of a large EU police force, not to mention the billions of euros the European taxpayer has poured into this tiny country. The state that the EU is trying to build has never really been accepted by the ethnic communities living there. And the EU is not prepared to stop the bullying and separatist tactics of the Bosnian Serbs in particular. Afghanistan is another stain on the EU’s soft power record. There, the Europeans have done too little and too late, wasting the initial good will of the Afghan people after the Taliban regime was overthrown in 2001. While the U.S. and its coalition forces were distracted by the war in Iraq, the Europeans did little to fill the gap left in Afghanistan. Europe’s most abject failure is its police-train ing mission there. It is still under-financed and under-staffed. What a shame for what should have been a stellar example of the EU’s use of soft power.

## 1ar NSA

Fight’s ongoing—won’t go away

Adam Bistagne, Los Angeles Loyolan, 2/3/14, State of the Union address falls short, www.laloyolan.com/opinion/state-of-the-union-address-falls-short/article\_37260576-8c4c-11e3-afb2-001a4bcf6878.html

In 2013, a slew of problems damaged the Obama Administration: the National Security Agency (NSA) leaks by Edward Snowden, health care rollout errors and a U-6 unemployment rate that’s still over 13 percent. Obama’s 2013 was so dreadful that Julie Pace of the Associated Press asked Obama whether 2013 had been the worst year of his presidency at a White House press conference.

Obama’s State of the Union address was the first opportunity to change the tone for the coming year, to dig his feet into the ground and sway the national conversation. I think Obama’s address failed to meet these goals and instead highlighted the flaws of his time of office.

The speech was Obama’s chance to say something significant about Edward Snowden, yet he missed his opportunity. Obama had a chance to reconcile abuses of privacy with a proposal to grant Snowden amnesty. Such a 180-turn on an issue fraught with serious domestic and international problems would have helped Obama reestablish his credibility.

For American citizens, it would have provided us with some hope that our informational privacy would be protected. For the U.S.’s international allies, it would have made substantial progress in repairing torn relationships. For example, the Brazilian president turned down a White House dinner last year because of the revelations about the NSA spying, a grievous snub to the administration. In addition, the European Union-United States trade deal negotiations have also been seriously derailed by the NSA fiasco.

Only a bold, decisive move by Obama would have given him even a slight chance to repair the damage caused by the leaks. The task forces and panel recommendations have done nothing to heal the political wounds. While a drastic change is not easy in politics, I think a significant policy reform was necessary in this situation. Granting Snowden amnesty would allow progress on an E.U.-U.S. trade deal comparable to the North American Free Trade Act (NAFTA), something that would improve the American economy while providing Obama with political capital necessary to get Congress back working, if only somewhat.

Overcomes issue-specific uniqueness—drains all of Obama’s momentum

Watkins 1/24/14

Ali, McClatchy News Service, “Battle set in Congress after privacy board says NSA program is illegal,” <http://www.lebanondemocrat.com/article/federal-government/326021>

A government oversight board's finding that the **N**ational **S**ecurity **A**gency**'s** massive collection of cellphone data is illegal and should never have been approved by the federal court created to deal with sensitive intelligence issues set off a furor in Washington on Thursday **that presages the bitter battle** **likely to come in Congress** over how to change the country's intelligence operations. Even before the Privacy and Civil Liberties Oversight Board released its report, members of Congress were lining up to either praise it or denounce it in a preview of what will surely be the debate as the nation's lawmakers take up issues that President Barack Obama **left unresolved in his announcement of NSA changes last week.** The statements showed that the NSA controversy has done what so many other issues have not \_ **brought together Republicans and Democrats on the same side**, for and against. Rep. Mike Rogers, the Michigan Republican who is chairman of the House Intelligence Committee, pronounced himself "disappointed" in the report, particularly in the decision of three members of the five-member board to declare the program illegal. He said that move went "well beyond their policy and oversight role." But the report was heartily endorsed by Rogers' fellow Republican, Rep. James Sensenbrenner of Wisconsin, who chairs the House Judiciary Committee and was the author of the USA Patriot Act, under which the NSA collection was authorized. Sensenbrenner in a statement said the privacy board's report confirmed his belief that the Patriot Act had been misinterpreted to justify the NSA surveillance program. "This report adds to the **growing momentum** behind genuine, legislative reform," he said, adding, in a slap at Obama, that "the president has failed to deliver on his promises of transparency and the protection of our civil liberties. It is up to Congress to rein in abuse and restore trust in our intelligence community." Sensenbrenner's comments were echoed by a senior Senate Democrat, Sen. Patrick Leahy of Vermont, who chairs the Senate Judiciary Committee. "The report reaffirms the conclusion of many that the ... bulk phone records program has not been critical to our national security, is not worth the intrusion on Americans' privacy, and should be shut down immediately," he said. Sen. Dianne Feinstein, the California Democrat who heads the Senate Intelligence Committee, offered no public comment on the report. But she has been a staunch defender of the NSA collection of cellphone data. Last week, when Obama announced his version of what he thought should be done about the program, Rogers and Feinstein issued a joint statement in which they praised the collection program and Obama for saying that the program had been critical to terrorism investigations and must be preserved. The privacy board did not agree. Created by Congress and appointed by Obama, the board said that it had found no instance in which the massive collection of Americans' cellphone records, including the numbers dialed and the time and duration of calls, had contributed to thwarting any terrorist operation or to the prosecution of anyone who'd engaged in an act of violence. Referring to the section of law under which the NSA program was authorized, the board said, "Our review suggests that the Section 215 program offers little unique value but largely duplicates the FBI's own information gathering efforts." It also noted, "Based on the information provided to the board including classified briefings and documentation, we have not identified a single instance involving a threat to the United States in which the program made a concrete difference in the outcome of a counterterrorism investigation." The board also **took a dim view of the** Obama **administration's position** that **the program** had **helped government investigators** prove that there was no threat in some cases. "We question whether the American public should accept the government's routine collection of all of its telephone records because it helps in cases where there is no threat to the United States."

## 1ar NSA—causes IBC

Causes an interbranch conflict

Winborn 1/21/14

Julian, Political Columnist, “Year of the president: National Security gets bridled,” Indiana Statesman

While the president views the agency as absolutely necessary, **changes to it will come,** and he wants Congress, the Justice Department and the intelligence community to jump on board, too. With blatant privacy concerns, the president will require judicial approval each time the government seeks information from phone databases. The president has also asked the Justice Department to complete a report on how to best protect and store data. Even though the president is reaching out to the Congress ahead of time — before the laws make the NSA review their policies — some **members are still not satisfied**, seeking more limits. Senator Ron Wyden stated that he is interested in reforms to show “security and liberty are not mutually exclusive.” Rep. Loretta Sanchez stated that she will not “sacrifice” the civil rights and liberties of Americans for “excessive collection of personal data.” Though officials inside the intelligence community do not agree with several congressional members, **it is well within Congress’ responsibilities to lay down ground rules for government surveillance.** And with all of the disapproval from across the country, **seeing what Congress will cook up to** restrain **the agency will be interesting.** National security is one area of politics that tends not to fall along party lines. Normally, the topic is very bipartisan. So **without** the **partisan gridlock**, Congress may move pretty quickly, boasting their own clarity on the situation as they propose various solutions to the agency’s privacy problem. So now we’re seeing that the president has made the right decision by approaching Congress. After all, such a move shows respect for the branch. However, he and the intelligence community may not be too pleased with **what congressional members may put on the table.**

## morrocco

IHRL must be robust --- any alternative triggers the region

Epstein 9 (Pamela, LLM – Golden Gate University, JD – University of La Verne, “BEHIND CLOSED DOORS: "AUTONOMOUS COLONIZATION" IN POST UNITED NATIONS ERA-THE CASE FOR WESTERN SAHARA” Spring, 2009, 15 Ann. Surv. Int'l & Comp. L. 107)

Part III discusses the legal principle of self-determination. The normative evolution of this principle is highlighted through a historical accounting of its American origins with Thomas Jefferson and Woodrow Wilson to the current customary international law principle as defined by U.N. resolution 1514 (XV). This section will bring to light the irony that, while the U.N. supported the granting of a fully independent East Timor to its people, there is a clear attempt to adopt a completely different and contradictory approach to an identical situation in Western Sahara. Part III concludes with a discussion of the normative progression of the right to self-determination, highlighting the incorporation of a human rights component as demonstrated by Kosovo's declaration as an independent state, as well as the right to natural resources.

 Part IV seeks to expose the role power politics has played in the thirty-plus year delay of the U.N. mandated referendum. This section will critically examine the ineffective role the U.N. Security Council has played in resolving the conflict, focusing on the actions of France and the U.S. Part V dissects the 2007 Autonomy Plan (hereinafter the "Plan") offered by Morocco and the continued failure to recognize the Saharawi's people's right to self-determination in a fair, free, and democratic manner. If any other solution besides this fundamental tenant of international and human rights law is utilized**, it will only lead to further instability and conflict in the region, which may ignite a** catastrophic spark **that could potentially lead to a** third world war**.** Finally, this paper will conclude with a policy argument for the use of Chapter 7 powers by the U.N. Security Council.